APPENDIX A

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

ROBERT OLSON Plaintiff / Appellant, vs. CONTINENTAL RESOURCES, INC., HAROLD HAMM, TOM LUTTRELL, DAVIS OPERATING COMPANY, & WILLIAM H. DAVIS, Defendants / Appellees	FILED COURT OF CIVIL APPEALS STATE OF OKLAHOMA OCT 30 2007 MICHALE S. RICHIE CLERK CASE NO. **102398**

APPEAL FROM THE DISTRICT COURT OF BLAINE COUNTY, OKLAHOMA

HONORABLE RONALD G. FRANKLIN, TRIAL JUDGE

SUMMARILY AFFIRMED UNDER RULE 1.201

Robert Olson
Tulsa, Oklahoma *Pro Se*

and

Julia C. Riemanb
Glenn A. Devoll
GUNGOLL, JACKSON, COLLINS,
BOX & DEVOLL, P.C.
Enid, Oklahoma

and
Robert B. Sartin,
Adam K. Marshall
BARROE & GRIMM, P.C.
Tulsa, Oklahoma

For Defendants / Appellees

OPINION BY JANE P. WISEMAN, JUDGE:

Plaintiff Robert Olson appeals the trial court's denial of his motion for a new trial on the trial court's previous order of dismissal of his claims against defendants Davis Operating Company and William H. Davis. He also appeals the trial court's grant of summary judgment to the remaining defendants, Contintal Resources, Inc., Harold Hamm, and Tom Luttrell. After review of the record[1] and applicable law, we summarily affirm the trial court's orders pursuant to Oklahoma Supreme Court Rule 1.201, 12 O.S. 2001, Ch 15, app. 1.

---

1. The issues were fully briefed in the trial court, and Olson's request to file an appellate brief pursuant to Oklahoma Supreme Court Rule 1.36(g) is therefore denied.

Olson contends that the present case, Blaine County District Court Case No. CJ-2004-121, is a refiling under 12 O.S. 2001 § 100 of Blaine County District Court Case No. CJ-2002-151. The procedural history of Case No. CJ-2002-151 as it relates to this case is set forth in *Olson v. Continental Resources, Inc.*, 2007 OK CIV APP 90, P.3d , (*Olson II*) in which another division of this court held that Olson's claims had previously been raised, adjudicated against him, appealed, and affirmed in *Olson v. Continental Resources, Inc.*, 2005 OK CIV APP 13, 109 P.3d 351 (*Olson I*).

In *Olson II*, the Court of Civil Appeals held that "[u]nder the doctrine of issue preclusion, [Olson] is estopped from relitigating in this case [CJ-2002-151] the same issue that was finally adjudicated in the prior proceeding [*Olson I*]. The mandate has issued in *Olson II*, and that opinion is final. Olson characterizes the present case as a refiling of CJ-2002-151 under 12 O.S. 2001 § 100; however, that previous case has been finally adjudicated on the merits, *i.e.*, summary judgment was granted to the defendants and affirmed on appeal.

Although Olson argues otherwise, the granting of summary judgment under Rule 13 of the rules for District Courts is a judgment on the merits of

Olson's claims [2] ,and the affirmance of that summary judgment in *Olson I* precludes Olson from raising any claims that were litigated or could have been litigated either in the previous case [3] (CJ-2002-151) or in a refiled lawsuit (CJ-2004-121) raising the same claims as the previous case.

The Court of Civil Appeals in *Olson II* concluded that the claims in CJ-2002-151 were precluded by *Olson I.* The claims in the present case, CJ-2004-121, are the same claims refiled under a new case

---

2. "A motion for summary judgment is a request for an adjudication on the merits. ' *Since summary judgment is an adjudication on the merits,* affirmative defenses that go to merits can be raised by this motion.' ' The main purpose of summary judgment is to avoid useless trials *and at the same time achieve a final determination on the merits.' " Union Oil Co. of California v. Board of Equalization of Beckham County,* 1996 OK 40, pgrf 10, 913 P.2d 1330, 1333 (citations omitted).

3. *See State of Oklahoma ex rel Moshe Tal v. City of Oklahoma city,* 2002 OK 97, pgrf 20, 61 p.3d 234, 245 ("Claim preclusion bars relitigation by parties or their privies of issues which either were or could have been litigated in a prior action which resulted in a prior judgment on the merits.").

number and are likewise precluded.

Under Rule 1.201 of the Supreme Court Rules [4], if a prior controlling appellate decision is dispositive of an appeal, this Court may summarily resolve the appeal, citing this rule and the controlling decision. The decision in *Olson II* is controlling and dispositive here and requires this Court to summarily affirm the trial court's orders in the present case pursuant to Rule 1.201, 12 O.S. 2001, ch 15, app.1.

SUMMARILY AFFIRMED UNDER RULE 1.201.

RAPP, C.J., AND FISCHER, P.J., concur.

October 30, 2007

---

4. Rule 1.201 provides in pertinent part: :In any case in which it appears that a prior controlling appellate decision is dispositive of the appeal, the Court may summarily affirm or reverse, citing in its order of summary disposition this rule and the controlling decision."

APPENDIX B

IN THE COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
DEC 11 2007
MICHAEL S. RICHIE
CLERK

THE CLERK IS DIRECTED TO NOTIFY ALL PARTIES OF THE FOLLOWING ORDER(S):

102,398 ROBERT OLSON, Plaintiff / Appellant, v. CONTINENTAL RESOURCES, INC., HAROLD HAMM, TOM LUTTRELL, DAVIS OPERATING COMPANY & WILLIAM H. DAVIS, Defendants / Appellees.

Appellant's Motion to submit two points of clarification, filed November 21, 2007, is granted.

Appellant's Petition for Rehearing, including clarifications in Appellant's motion of November 21, 2007, is denied.

ALL JUDGES CONCUR.
SO ORDERED this 7th day of December, 2007.

s\ John F. Fischer
JOHN F. FISCHER
Presiding Judge, Division II

APPENDIX C

FILED
SUPREME COURT
STATE OF OKLAHOMA
FEB 11 2008
MICHAEL S. RICHIE
CLERK

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

MONDAY, FEBRUARY 11, 2008

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT

102,398 Robert Olson v. Continental Resources, Inc., et al

Petition for certiorari is denied.

CONCUR: □INCHESTER, C.J., Edmondson, V.C.J., Hargrave, Opala, Wa't, Taylor, Colbert, Reif, J.J.

DISSENT: Kauger, J.

103,480 Regina Justice, mother and next friend of Wyatt Justice, a minor v. Life-Stat Ambulance Service, an Oklahoma corporation

Petition for certiorari is denied.

CONCUR: Winchester, C.J., Edmondson, V.C.J., Hargrave, Opala, Kauger, Watt, Taylor, Colbert, J.J.

DISSENT: Reif, J.

103,601 Dale Staton and Carolyn Staton, husband and wife v. The Guarantee State Bank of Mangum, Oklahoma
Petition for certiorari is denied.
CONCUR: Edmondson, V.C.J., Hargrave, Opala, Kauger, Watt, Colbert,Rief, J.J.
Dissent: Winchester, C.J., Taylor, J.

103,912 Alicia Chambers v. JB Tarkington and William Eugene Tarkington, Trustee or their successors in trust, etc.
Petition for certiorari is denied.
CONCUR: Winchester, C.J., Edmondson, V.C.J., Hargrave, Kauger, Watt, Taylor, Reif, J.J.
DISSENT: Opala, Colbert, J.J.

104,078 Regina Justice, mother & next friend of Wyatt Justice, a minor v. Life-State Ambulance Service, an Oklahoma corporation and Scottsdale Insurance Company
Petition for certiorari is denied.
CONCUR: Winchester, C.J., Edmondson, V.C.J., Hargrave, Opala, Kauger, Watt, Taylor, Colbert, J.J.
DISSENT: Reif, J.

s\b Edmondson
VICE CHIEF JUSTICE

APPENDIX D

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA
DIVISION II

ROBERT OLSON Plaintiff/Appellant, vs. CONTINENTAL RESOURCES, INC., HAROLD HAMM, TOM LUTTRELL, DAVIS OPERATING COMPANY & WILLIAM H. DAVIS Defendants/Appellees.	)	Filed Nov 8, 2007 Case No. 102398 District Court Case No. CJ-2004-121

PETITION FOR REHEARING, And Motion for Summary Reversal under Supreme Court Rule 1.201, Second Paragraph; Citing prior Controlling decision *Fellows v. Owens*, 178 Okla. 224, 1936 OK 722, 62 P.2d 1215 And filed within 10 days.

COMES NOW, the plaintiff/Appellant, Robert Olson, and petitions the Court to reconsider its decision of October 30, 2007 for the following reasons:

1. The Summary Judgment filed on August 11, 2003 was procurred by fraud, both intrinsic and extrinsic, perpetrated by the Defendants. Both

intrinsic fraud and extrinsic fraud are sufficient to attack a summary judgment that has been final and appealed. *Patel v. OMH Medical Center, Inc.*, 1999 OK 33, 987 P.2d 1185, *Sadberry v. Hope*, 1968 OK 107, 444 P.2d 175. A summary Judgment that contains "Conclusions of Law" that do not apply to the factual situation on the ground and that was procurred by fraud, Cannot Be dispositive. The prior appellate decision, *Olson v. Continental Resources, Inc.*, 2005 OK CIV APP 13, 109 P.3d 351 (*Olson I*) which contained a false statement claiming Olson attached no supporting evidentiary materials whatsoever, (*Olson I*, page 5, #102933 Record pg 1037 (Record)), repeated and quoted the equivocal word "probable" (*Olson I*, Record pg 1037) in support of the summary judgment and applied primary lease term (before production) oil and gas Case Law to an established oil and gas production situation, Cannot Be dispositive.

2. The April 13, 2007 Opinion by Judge Bell, *Olson v. Continental Resources, Inc.*, 2007 OK CIV APP 90, __P.3d ___, (*Olson II*), also contains a false statement of fact on page 3 therein: "Plaintiff's pleadings were based on alleged inappropriate ex parte communications between opposing counsel and Judge Franklin, **about which Plaintiff knew during the original trial proceedings.**" (emphasis by Plaintiff/Appellant) This statement is startling false! I, the Plaintiff/Appellant did not know

anything was wrong until I read Defendants' application for attorney fees which was filed four days after the Summary Judgment Order was filed. That application included an entry for preparing a highlighted notebook for the Judge.

3. Plaintiff refiled the case as Blaine County DistrictCourt Case CJ-2004-121 in time to beat the one-year statute limitation under 12 O.S. 2001 Section 100. The filing of CJ-2004-121 and the requested recusal of Judge Franklin brought forth a hearing before Judge Ray Dean Linder (Record, Linder January 13, 2005 Transcript) and the Affidavit of Ms. Julis C. Rieman (Record pg 1577, 1578) describing the extent of her actions and the extent of the prepared, highlighted Case Summary Notebook and admitting the clandestine *ex parte* nature of the hand delivered Notebook to Judge Franklin. In *Olson II*, Judge Bell admits that opposing counsel did not provide Plaintiff with a copy of the Notebook. The Affidavit of Ms. Julia C. Rieman admits the Notebook contained copies of selected opinions, highlighted and indexed to their briefs. Highlighting and indexing is a way to focus the Judge's attention and influence the Judge's opinion. This kind of legal assistance to the Judge is defined as fraud against the party who receives no notice and has no opportunity to respond; thus depriving the un-noticed party of a fair trial. *Fellows v. Owens*, 178 Okla. 224, 1936 OK 722, 62 P.2d 1215, 1218.

This is an admission by Judge Bell that opposing counsel violated Rules 3.5(a), 3.5(b), 8.4(a) and 8.4(f) of the Rules of Professional Conduct, Title 5, Chapter 1, Appendix 3-A and that he is willing to overlook those violations. The Affidavit of Ms. Julia C. Rieman (Record pg 1577, 1578) shows Judge Franklin accepted the legal assistance Case Summary Notebook. When Judge Franklin accepted the Case Summary Notebook, that Notebook officially became a document of the case CJ-2002-151. That Notebook amounts to an extra, Cliff's Notes style summary brief to the Judge that the agrieved party did not have the opportunity to respond to. That is fraud and deprives the agrieved party of a fair trial.

4. When Judge Franklin accepted the substantive, *ex parte* Case Summary Notebook, he violated Canons 3B(6), 3B(6)(a) and 3B(6)(b) of the Code of Judicial Conduct, Title 5, Chapter 1, Appendix 4. When Judge Franklin threw away the only (and unrecorded) copy of the Cliff's Notes style Case Summary Notebook, he violated O.S. Title 21 Section 461, covering the destruction of court documents. (Transcript, Judge Franklin, June 17, 2004, Pg 6, Record pg 1543, 1544). In *Olson II,* Judge Bell is willing to overlook these judicial violations of the rules which deprived the Plaintiff of a fair trial.

None of the judges who looked at any stage of

either CJ-2002-151 or CJ-2004-121 seem to have any understanding of oil and gas law. Canon 3B(1) of the Code of Judicial Conduct says the judges should be faithful to the law and maintain professional competence in it. A judge should not take an attorney's word for what the law really is. Whether the fraud is actionable, actual or constructive is immaterial; it is still fraud. *Patel, supra.*

5. The filing of Blaine County District Court Case No. CJ-2004-121 flushed out the proof of the individual fraud perpetrated against the Plaintiff. The pursuit of Case CJ-2004-121 also brought out that the practice of attorneys providing judges with clandestine *ex parte* legal assistance is commonplace in Oklahoma. (Oklahoma Appeal # 102933 Record, Judge Linder Transcript of January 13, 2005, pages 32 and 33, 50; and Record pg 1592 - 1594) (Linder Transcript). This is Insider Law and is as fraudulent on the public as insider trading on the stock market. The public does not know about Insider Law but is aware of the increased injustice. Figure 1 is a chart of Oklahoma Supreme Court Case Numbers vs years. After attorney legal assistance to the judge was declared fraud in 1936, the increase in case load stabilized until about 1975. When the Courts started to use the summary judgment process to reduce case load in about 1975 and Oklahoma District Court Rule

13 was adopted in November 1984, the Supreme Court Case Load dramatically accelerated. This is the public's response to the injustice of the present summary judgment process. In the January 13, 2005 Judge Linder Transcript, page 50, Judge Linder testified from the bench that he had been a judge for 37 years and testified he had seen thousands of the Case Summary Notebooks and the practice is quite commonplace. So the time frame of the attorney 'clandestine *ex parte* legal assistance to the judge' fraud corresponds to the dramatic increase in Supreme Court Case Load from about 1975 to the present. Almost all the entire careers of all the judges in Oklahoma have proceeded under the umbrella of the Insider Law Fraud. The symbiotic relationship with the attorneys takes work load off the judges' shoulders. This creates bias.
Who is to know ?

6. So, the espoused Court policy on summary judgments (Judge Wiseman's Opinion of October 30, 2007, Case No. 102,398, Page 3, footnote 2) has backfired for the last 30 years. Fair trials are never useless; all contentions can be fully aired. The present summary judgment process is subject to manipulation by the common practice of attorneys clandestinely providing judges with substantive, *ex parte* Cliff's Notes style Case Summary Notebooks to guide and influence the judge's decision with no notice to the opposing party and no record. This

deprives the un-noticed party of having a fair trial and an impartial judge.

7. Every act of every Oklahoma Court proceeding subsequent to the fraud is tainted by the fraud. By refusing to allow me, the Appellant, to brief my side of the case to the Court, the court is depriving me, the Appellant, the opportunity to fully and fairly present my side of the case to the Court; and as importantly, to the record. I am due a jury trial and the Court is depriving me of my rights to a fair trial before an impartial judge, as is guaranteed under the Fourteenth Amendment of the United States Constitution. Somewhere, the search for substantial justice must superceed the current failed summary judgment policy.

8. **Motive:** In May of 2000, Continental Resources petitioned the Oklahoma Corporation Commission for an increased density well in the Matli #1-17 well Section 17, T16N-R11W, Blaine County, Oklahoma. (Record pg 1583) In the course of that petition, Continental Resources, Inc., valued my 1.5% override at $ 937,125.00 at $5.25 per MCF gas price. The working interest split in ownership of the Old Leases (and the New Leases) was ~52% Continental Resources and ~48% Davis Operating Company, et al. (Settlement Agreement Letter, Record pgs 1565 - 1568). The split of the value of my override allowed Davis Operating Company to pay off its debt to Continental Resources, Inc. of

more than $24,849.43 with no out-of-pocket expense. (Settlement Agreement Letter, pgrf 1 and 5).

9. The Court is not able to write an Opinion that says:

State Commissioners of Land Office of Said State v. Amoco Production Company, Oklahoma Appeal # 53462, February 2, 1982, Okl., 645 P.2d 468, referencing Godfrey v. McArthur, 186 Okl. 144, 96 P.2d 322, 325 (1939), (Record pg 1488, 1490, 1491), which says:

> "After production is found in time to preserve the lease, the question with reference to its extension and operation over all the premises described therein is one of diligent and proper development according to the covenants contained in the lease; it is a question of forfeiture, not one of expiration."

is not applicable because ... .

b. *Stewart v. Amerada Hess Corporation,* Oklahoma Appeal # 51254, # 51255, 604 P.2d 854 (Okla. 1979) Key Mines and Minerals 78.1(8), 260 k 78.1(8), which says:

> "Where oil and gas lease contains habendum clause providing that the lease is to remain in force after the primary term for as long thereafter as oil or gas is produced, **under no circumstances** will cessation of production in

paying quantities ipso facto deprive the lessee of his extended-term estate.

(bold by Plaintiff herein)

And {II, page *858, [5][6][7]}, (Record pg 1502) is not applicable because ... .

c. *Caudle v. Brannon,* 176 Okla. 394, 56 P.2d 131 (1936), which says:

"Lessee-sublessor entitled to recover overriding royalty on production despite attempted release of lease by sublessee to lessor."

is not applicable because ... . (Please see Exhibit 7, Oklahoma Appeal # 102933, Record pg 1536.)

d. *Phillips Petroleum Co. v. Taylor,* 115 F.2d 726, 116 F.2d 994, 995, 996, 61 S. Ct. 941 (Mem), 313 U.S. 565, 85 L. Ed. 1524 , (Oklahoma Appeal No. 102933 Record pgs 1633 - 1641)

which says:

"The law requires an assignee who stands in the shoes of his lessee-assignor, to do that which an ordinary prudent operator would do under the circumstances, having due regard for the interests of all parties. - - - - For the protection of the lessor, the law imposes upon the assignee the duty, when he drills, to exercise reasonable prudence solely in order to prevent loss to the lessor of that which is rightfully his, be the loss by drainage or refusal to capture or surrender of the lease. This duty, where not expressed, is

imposed by implied covenant ." (Record pg 1636) (bold by Plaintiff herein) and

> "The lessee-assignor of an oil and gas lease, retaining an overriding royalty, **payable out of the first oil and gas produced,** as sole consideration for the assignment of the lease and the oil field equipment, was entitled to the benefit of an implied covenant by the assignee to protect against drainage."

is not applicable because ... .

e. *Cain v. Neumann,* 316 S.W.2d 915, Citing *Cole v. Philidelphia Company* 345 Pa 315, 26 A.2d 920, 923 held:

> "That a surrender of an old lease in exchange for a new lease when there was production under the terms of the old leases, did not destroy the rights of others claiming under the old lease. 'Would anyone contend that a lessee could be heard to say, even in writing, that he surrendered a lease while he at the same held the premises and continued to operate ? ...' In other words, even if there were an express surrender clause, non-production must be the fact, not a mere recital. "
>
> (Record pg 1644) and

"Appellants, before the 1953 lease, owned property rights under the clear terms of the 1918 lease. They did not surrender that ownership, and so long as production continued, nobody else could." (Record pg 1645)

is not applicable because ... .

f. *Danne v. Texaco Exploration and Production, Inc.,* (Okla. App Div 2, 1994), 1994 OK CIV APP 138, 132 Oil and Gas Rep. 623, 883 P.2d 210, which says:

"Habendum clause in oil and gas lease is estate on condition subsequent creating only right of entry in grantor; with such estate, grantor must bring action to cause forfeiture of estate." and

"*Anderson v. Talley,* 199 Okla. 491, 187 P.2d 206 (1947), the court ruled: "[b]y the receipt of the [royalty] payments, the lessor clearly and definitely recognized the existence of the lease long after the breach. We conclude the lessor waived the breach of the lease which the lessees had committed and that plaintiff is not entitled to cancellation of the lease therefor." "*Id.* 187 P.2d at 208" (Record pg 1659)

is not applicable because ... .

g. *Hudspeth v. Schmelzer,* 182 Okla. 416, 1938 OK 161, 77 P.2d 1123 which says:

> "The essential requisite of abandonment of oil and gas lease is an intention on part of lessee to relinquish his interest in premises, ..." (Record pg 1663) and

h. *Blackwell Oil and Gas Co. et al. v. Whited,* 81 Okla. 45, 1921 OK 8, 196 P. 688, which says:

> "To constitute abandonment in respect of an oil and gas lease there must be a concurrence of the intention to abandon and an actual relinquishment of the property, so that it may be appropriated by the next comer." (Record pg 1673)

are not applicable because ... .

9. **The Intrinsic Fraud**

Continental Resources, Inc. filed a release of "all right title interest" for Section 17, T16N-R11W, Blaine County, Oklahoma. The Old Leases, with my override, were valid paying leases at the time of filing the release. Therefore, that release is a filing of a false document of title.

10. **Fiduciary Duty**

Continental Resources, Inc. owes the Plaintiff/Appellant Fiduciary Duty through three circumstances: (1) Continental Resources, Inc. had absolute and complete control of paying the override proceeds to the Plaintiff, and (2) The assigned override is effective from first production, which means when production is first established, the assigned override is converted into a vested mineral estate. That estate cannot be extinguished by a mere recital of surrender; Production must be totally absent. That is not the case here ! And (3) By Contract; The override herein, assigned from the base leases, before production was established, vested by production, effective from first production, has title superiority. That assignment came about as part of the employment contract. Proof is the assignment. When participants join the venture, they explicitly agree to pay, or cause to be paid, the override, because participation is subject to the Net Revenue. Proof is the division order. By this, the override is a third party creditor beneficiary of the participation agreement. When Continental Resources, Inc. acquired its ~52% interest, as an assign Continental Resources is bound by the previous stipulations and agreements. The Operating Agreement outlines how the participants will carry out and fulfill their

obligations, with one entity representing the group. So, by extension, the vested override is a third party creditor beneficiary of the Operating Agreement and is due Fiduciary Duty from the Operator.

11. **Summary Judgment**

Defendants were never entitled to summary judgment as a matter of law.

PRAYER

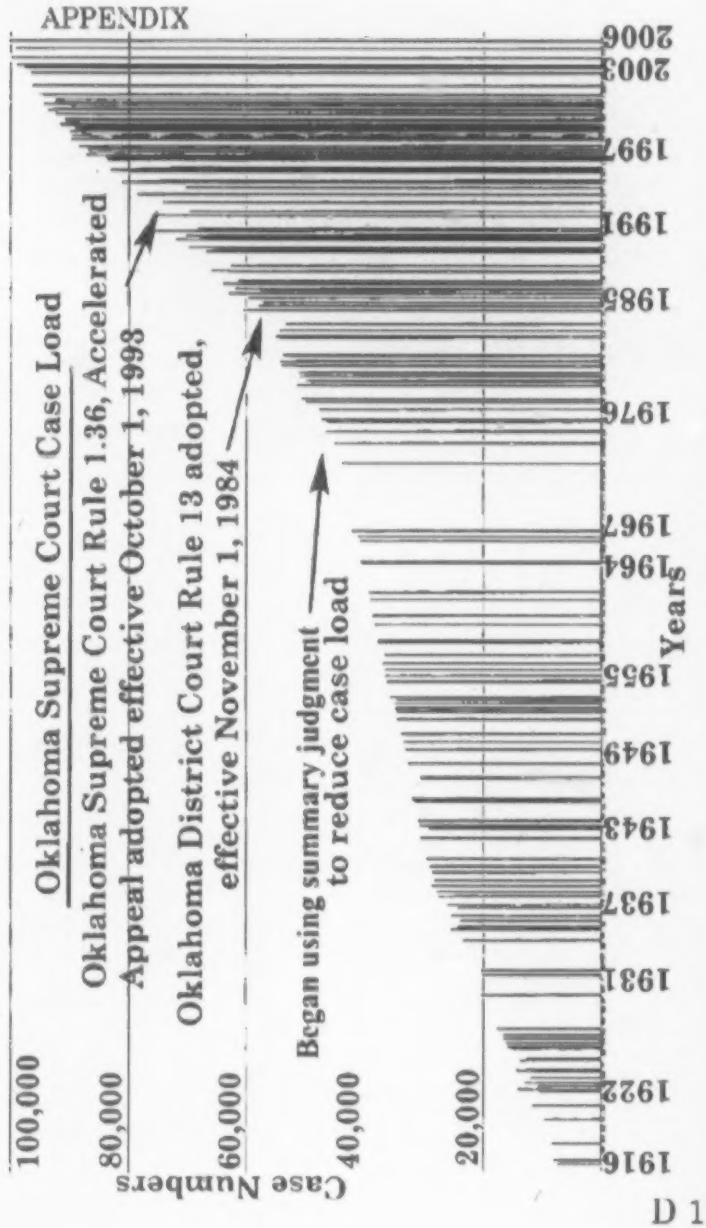
The Plaintiff/Appellant prays the Court will reappraise the law behind this case and allow an oral hearing before a Supreme Court referee and remand this case back to Blaine County for an actual jury trial.

Respectfully submitted,

s\ Robert Olson

Robert Olson
9022 E 60th St
Tulsa, Oklahoma 74145
918 252 1987

Judges will have to answer in court, on the record, whether they will accept the clandestine, ex parte substantive Cliffs Notes style case summary notebooks



Judges will have to answer in court, on the record, whether they will accept the substantive, clandestine, *ex parte* Cliffs Notes style Case Summary Notebooks.

The Oklahoma Supreme Court Case Load vs Years Chart appears in proper size and font as Appendix _____ .

CERTIFICATE OF MAILING

I hereby certify that on this 8th day of November, 2007, a true and correct copy of the above and foregoing instrument was mailed via first class mail with proper postage fully prepaid thereon to:

Robert B. Sartin
Barrow & Grimm,
P.C., 610 South
Main, Suite 300
Tulsa, Oklahoma
74119-1248
918 584 1600
Attorneys for
Defendants Davis
Operating Company,
William H. Davis

Glenn A. Devoll
Julia C. Rieman
Gungoll, Jackson, Collins,
Box, & Devoll, P.C.
P.O. Box 1549
Enid, Oklahoma 73702
580 234 0436
Attorneys for Defendants /
Appellees Continental
Resources, Inc., Harold
Hamm and Tom Luttrell

Blaine County
Court Clerk
212 N. Weigle
Watonga,
Oklahoma 73772

s\ Robert Olson
Robert Olson
9022 E 60th St
Tulsa, Oklahoma 74145
918 252 1987

APPENDIX E

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ROBERT OLSON	)	FILED SUPREME COURT
Plaintiff/Appellant,	)	STATE OF OKLAHOMA
vs.	)	JAN -2, 2008
CONTINENTAL RESOURCES, INC.,	)	MICHAEL S.
HAROLD HAMM, TOM LUTTRELL,	)	RICHIE
DAVIS OPERATING COMPANY &	)	CLERK
WILLIAM H. DAVIS	)	Case No.
Defendants/Appellees.	)	**102398**

PETITION FOR A WRIT OF CERTIORARI

COMES NOW the Appellant, Robert Olson, and petitions the Court for a Writ of Certiorari from the Oklahoma Court of Civil Appeals Court, Division II, decision in Case #102,398, filed on October 30, 2007. A timely Petition for Rehearing was filed by certified U.S. mail, return receipt requested on November 8, 2007. This Petition for Rehearing was filed within 10 days to comply with the second paragraph of Supreme Court Rule 1.201, 12 O.S. 2001, Ch 15, App. 1, and stated that the prior controlling decision applicable to summary disposition is *Fellows v. Owens,* 178 Okla. 224, 1936 OK 722, 62 P.2d 1215, which states that clandestine, *ex parte* legal assistance, helping the judge make his decision, without notice to the other party is fraud on the party not given notice.

Misrepresentations by the Courts

1. Appellant's Petition for Rehearing was denied by the Oklahoma Court of Civil Appeals, Division II, by Judge F. Fischer, Presiding Judge, Division II, filed December 11, 2007. This denial of rehearing stated Plaintiff filed his Petition for Rehearing on November 21, 2007. This misrepresentation by the Court would imply Plaintiff had filed his Petition for Rehearing out of time, which would be reason to deny the Petition for Rehearing. A timely request for correction has been filed.

This is not the first instance of this type of misrepresentation by the Courts, detrimental to the Appellant, in Plaintiff / Appellant's litigation to try to recover his stolen, income producing property, in Blaine County District Court Cases CJ-2002-151 and CJ-2004-121; and the appeals therefrom.

Misrepresentation 2. When a Judge takes the bench he represents to the world that he is honorable and that he will follow the law and live up to the Code of Judicial Conduct. When Judge Franklin accepted the clandestine, *ex parte* Case Summary Notebook from Defendants' counsel, (# 102398 Record Index 12, Exhibit B), he violated Canon 3B(6)(a) and Canon 3B(6)(b) of the Code of Judicial Conduct. When Judge Franklin did not record the Case Summary Notebook and did not order a copy be provided to the Plaintiff, Judge Franklin violated Canon 3B(6)(b) of the Code of

Judicial Conduct. When Judge Franklin threw away the only copy of the Case Summary Notebook, Judge Franklin violated O.S. Title 21 Section 461 (# 102398 Record Index 8; Index 12 Exhibit C).

Misrepresentation 3. Court of Civil Appeals, Division III, Judge Carol M. Hansen stated in her Opinion in Case #99704, filed February 17, 2004, that the Plaintiff submitted "no evidentiary materials whatsoever" attached to his motion to deny Defendants' motions for summary judgment. (Case # 102,398 Record Index 4, Exhibit 1, Page 5; Index 6, Exhibit 5.) This statement is entirely false. (Case # 102,398 Record Index 6, Exhibits 7, 8.). Judge Hansen affirmed the trial court's summary judgment Order " **BECAUSE** Olson submitted no evidentiary materials establishing a material issue of fact." Judge Hansen affirmed against Plaintiff / Appellant because of that judicial misrepresentation that is the basis of the Opinion in Case # 99704, against the Appellant. The Courts were informed of this misrepresentation but took no corrective action.

Misrepresentation 4. In Judge Hansen's Opinion of February 17, 2004, in Case # 99704, Judge Hansen applied oil and gas lease primary lease term case law to a secondary lease term situation and approved using the word "probable" in a summary judgment. In doing so, Judge Hansen violated Canon 3B(1) of the Code of Judicial Conduct by not remaining cognizant of the law.

Misrepresentation 5. Oklahoma Court of Civil Appeals, Division I, Judge Robert Dick Bell, in his Opinion in Case # 102933, filed April 13, 2007, stated in Paragraph 4, that " Plaintiff's pleadings were based on alleged inappropriate *ex parte* communications between opposing counsel and Judge Franklin, about which Plaintiff knew during the original trial proceedings."

This misrepresentation seems to seek to discredit Plaintiff's claim of fraud by implying previous knowledge. This is outrageous. The Case Summary Notebook was made only 6 days before the trial court pronounced the summary judgment, only one copy was made and it was surreptitiously given to Judge Franklin, *ex parte*. (Case # 102398 Record, Index 12, Exhibit B, page 2.).

Gentlemen: The above listed and described Judicial misrepresentations are too many and too tailored to the specific legal circumstances to be purely coincidental. The Courts have been made aware of these judicial misrepresentations and have taken no corrective action. Why ? Is there a concerted effort by the appeals courts to just get rid of this case ?

History Before 1936, Oklahoma Supreme Court Case Load was rising rapidly. In 1936, the Oklahoma Supreme Court ruled that clandestine, *ex parte* legal assistance to the judge by counsel **was fraud** when the other side was not notified

By enforcing Oklahoma Supreme Court Rule 1.36, which does not allow appeal briefs on summary judgment, the Oklahoma Supreme Court has denied the Plaintiff / Appellant the opportunity to refute the erroneous legal conclusions of the trial court and thus has denied the Plaintiff / Appellant he opportunity to defend himself.

This theft of private property would never stand in a jury trial.

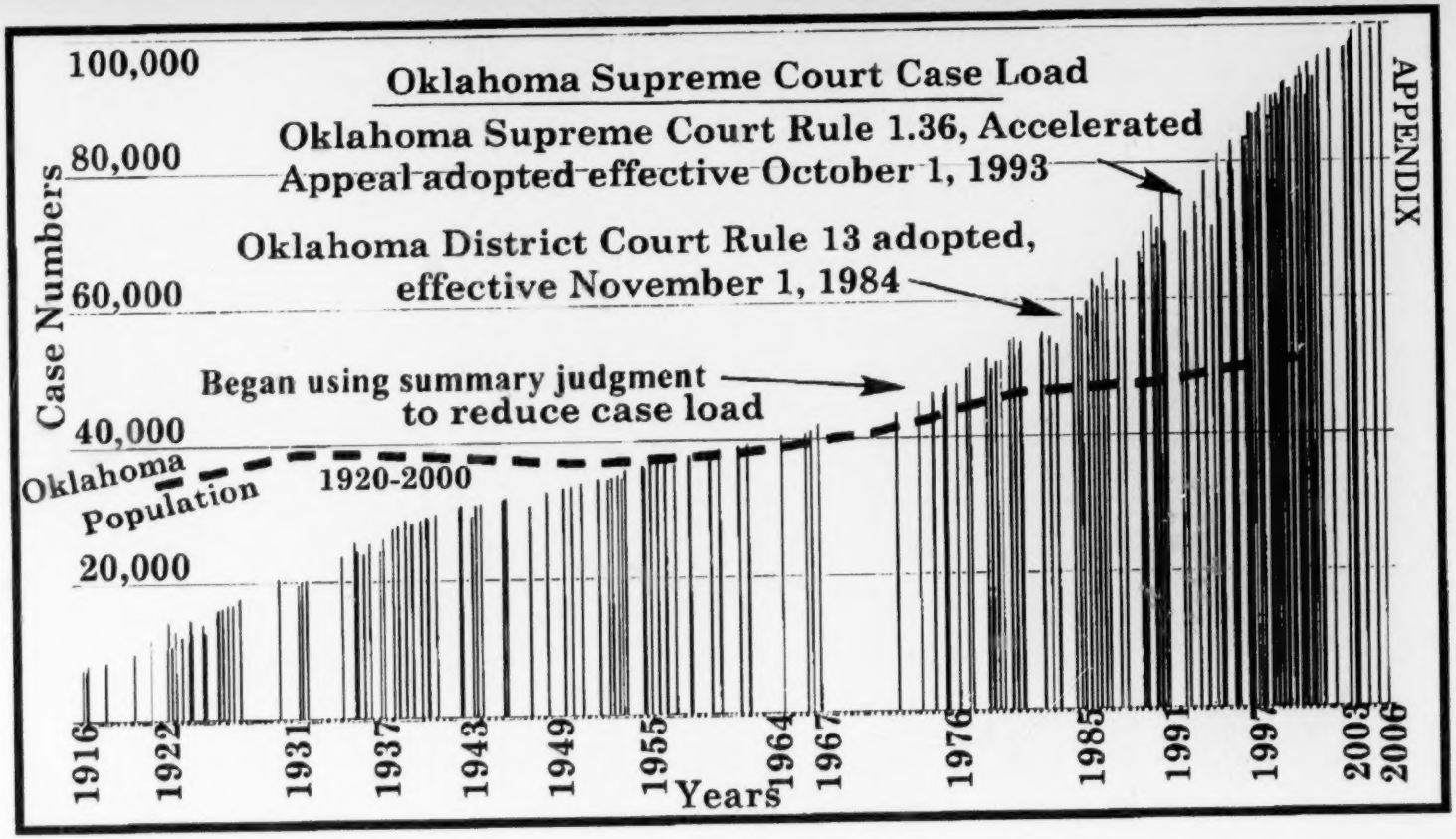
ARGUMENTS

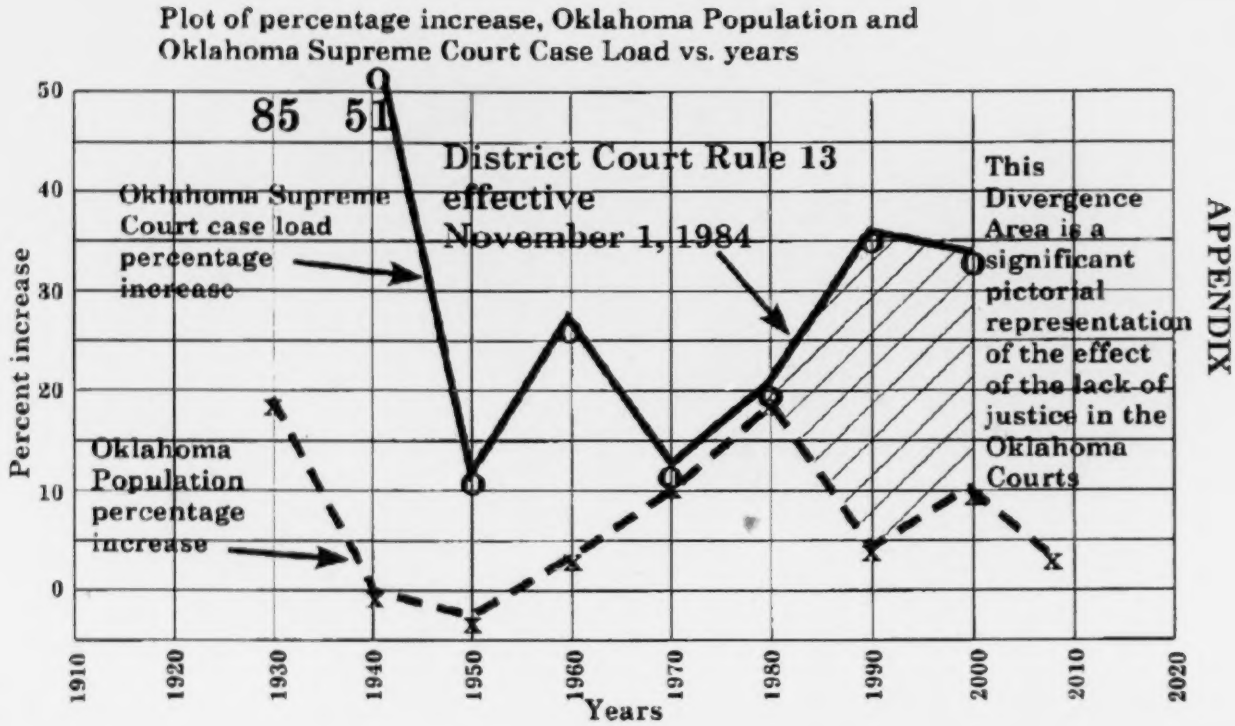
1. *Olson I* is on appeal at the United States Supreme Court.

2. There has been no mandate issued in *Olson II*.

3. Some claims in Blaine County District Court Case CJ-2004-121 are the same as in Blaine County District Court Case CJ-2002-151. However since the Plaintiff / Appellant was prevented from fully and completely defending himself due to the *ex parte* Case Summary Notebook fraud in Case CJ-2002-151, any decision made subsequent to the fraud is not preclusionary and thus is not dispositive in Case CJ-2004-121, *Union Oil Co. of California v. Board of Equalization of Beckham County*, 1996 OK 40, pgrf 10, 913 P.2d 1330. Continental and Davis did not need to steal Plaintiff's override.

The settlement agreement between Continental Resources, Inc. and Davis Operating Company was kept confidential, away from the Plaintiff / Appellant at the time of filing Case CJ-2002-151.


APPENDIX
Oklahoma Supreme Court Case Load
Oklahoma Supreme Court Rule 1.36, Accelerated Appeal adopted effective October 1, 1993
Oklahoma District Court Rule 13 adopted, effective November 1, 1984
Began using summary judgment to reduce case load
Oklahoma Population 1920-2000
Case Numbers
100,000
80,000
60,000
40,000
20,000
1916
1922
1931
1937
1943
1949
1955
1964
1967
1976
1985
1991
1997
2003
2006
Years


Plot of percentage increase, Oklahoma Population and
Oklahoma Supreme Court Case Load vs. years
85 51
District Court Rule 13
effective
November 1, 1984
Oklahoma Supreme
Court case load
percentage
increase
Oklahoma
Population
percentage
increase
This
Divergence
Area is a
significant
pictorial
representation
of the effect
of the lack of
justice in the
Oklahoma
Courts
Percent increase
50
40
30
20
10
0
1910
1920
1930
1940
1950
1960
1970
1980
1990
2000
2010
2020
Years

APPENDIX

Because of the new information contained in the settlement agreement letter, later acquired, Plaintiff / Appellant added new tort claims of Sham Legal Process, Interference with a Business Contract, and Conversion.

4. Concerning *Union Oil Co. of California v. Board of Equalization of Beckham County,* 1996 OK 40, pgrf 10, 913 P.2d 1330, a fair trial is never a useless trial. The sentence structure in footnote 4 of Judge Wiseman's decision in Case # 102398, filed October 30, 2007, suggests the Court is more interested in processing case load than it is in decerning right from wrong and finding justice.

5. The false legal premises of both *Olson I, #99704* and *Olson II, # 102933,* as discussed above, neither can be considered dispositive.

CONCLUSIONS and PRAYER

The summary judgment Order in Blaine County District Court Case CJ-2002-151 was obtained by fraud. Therefore it cannot be on the merits. The appeal opinion in Court of Civil Appeals, Division III, was determined by significant judicial misrepresentation, that opinion cannot be on the merits. The prior controlling authority from 1936 until 1982 was *Fellows v. Owens, supra* ; Then fraud took over.

The Plaintiff / Appellant prays the Court grant a Writ of Certiorari. The Plaintiff / Appellant prays the Court vacate the previous Court of Civil Appeals opinions, reverse all the previous trial court decisions and remand for a jury trial on all the issues outlined in Plaintiff's Petition in Blaine County District Court Case CJ-2004-121.

Respectfully submitted,

s/b Robert Olson

Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145
918 252 1987

CERTIFICATE OF MAILING

I hereby certify that on this 21 st day of December, 2007, a true and correct copy of the above and foregoing instrument was mailed via first class mail with proper postage fully prepaid thereon to:

Robert B. Sartin
Barrow & Grimm, P.C.
610 South Main,
Suite 300
Tulsa, Oklahoma
74119-1248
918 584 1600

Attorneys for Defendants Davis Operating Company, William H. Davis

Glenn A. Devoll
Julia C. Rieman
Gungoll, Jackson, Collins, Box, & Devoll, P.C.
P.O. Box 1549
Enid, Oklahoma
73702
580 234 0436

Attorneys for Defendants / Appellees Continental Resources, Inc., Harold Hamm and Tom Luttrell

Blaine County Court Clerk
212 N. Weigle
Watonga, Oklahoma 73772

s/b Robert Olson

Robert Olson
9022 E 60th St
Tulsa, Oklahoma 74145
918 252 1987

APPENDIX **F**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff / Appellant vs. CONTINENTAL RESOURCES, INC., An Oklahoma Corporation, HAROLD HAMM, An Individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, An Individual and Vice President of Continental Resources, Inc. ***AND*** DAVIS OPERATING COMPANY, An Oklahoma Corporation, WILLIAM H. DAVIS, An Individual and President of Davis Operating Company, Defendants / Appellees.	FILED SUPREME COURT OF THE STATE OF OKLAHOMA FEB -2 2006 MICHAEL S. RICHIE CLERK Appeal Case No. **# 102398** District Court Case Number CJ-2004-121

APPELLANT'S REQUEST FOR PERMISSION TO FILE A BRIEF IN SUPPORT OF HIS SIDE OF THE CASE UNDER OKLAHOMA SUPREME COURT RULE 1.36 (g)

COMES NOW, The Plaintiff / Appellant,

Robert Olson, and requests permission from the Oklahoma Supreme Court to file a brief in support of his side of the case for the following reasons:

Under United States Supreme Court Rule 29 (4.)(c), which states:

> (c) In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U.S.C. § 2403(b) may apply and shall be served on the Attorney General of that State. In such a proceeding from any court of the United States, as defined by 28 U.S.C. § 451, the initial document also shall state whether that court, pursuant to 28 U.S.C. § 2403(b), certified to the State Attorney General that the constitutionality of a Statute of that State was drawn into question. See Rule 14.1(e)(v).

I, Appellant, Dr. Robert Olson, question the constitutionality of Oklahoma District Court Rule 13 as being in conflict with the Due Process of Law provisions of the Fourteenth Amendment of the United States Constitution. New evidence; a plot

of Oklahoma Supreme Court Case Numbers versus Years from 1916 to 2006 (Exhibit 1), shows a dramatic increase in Oklahoma Supreme Court case load immediately after the present District Court Rule 13 was adopted and became effective on November 1, 1984. That dramatic increase in the number of appeals is the citizens howl of dismay at the unfairness of the nonstatutory District Court Rule 13. Justice is not a game of procedural "gotcha".

The party opposing summary judgment must answer within fifteen (15) days, must attach evidentiary materials before discovery and has no absolute right to oral argument. All of these elements of District Court Rule 13 impede the ability of the party opposing the motion for summary judgment to effectively present his side of the case.

Since Oklahoma Supreme Court Rule 1.36 on accelerated appeal, reviews only the materials presented to the trial court, the party opposing the motion for summary judgment may well find himself in the position of having to answer the original Petition, organize and present the material in opposition to the motion for summary judgment before adequate discovery, and prepare for an appeal, all in fifteen (15) days. This is an unreasonably short amount of time. Motions to

extend the time, at the discretion of the court, do not mitigate the conflict of District Court Rule 13 with the Due Process of Law provisions of the Fourteenth Amendment of the United States Constitution.

Adequate time, adequate discovery and oral argument are fundamental rights; not at the discretion of the court. Please see Goldberg v. Kelly, 397 U.S.254, 90 S. Ct. 1011.

The implementation of District Court Rule 13 (Lewis v. Phillips Petroleum Co., Okla. App., 559 P.2d 868 (1977)) and Oklahoma Supreme Court Rule 1.36 (Oklahoma Civil Procedure Forms and Practice, 2nd Ed., Clyde A. Muchmore, Rel-1/04, pg 10-55, paragraph 3) are designed for case load reduction rather than justice. These rules have not met the objective of case load reduction.

Case load reduction can be met by providing justice in legal proceedings.

District Court Rule 13 is the first procedure used in most District Court cases. The dramatic increase in Oklahoma Supreme Court appeal filings since November 1, 1948 is the citizens' reaction to the manifest injustice of District Court Rule 13. No matter what the attorneys and judges think, Exhibit 1 indicates the public perceives District

Court Rule 13 as unjust.

United States Supreme Court Rule 14.1 (g)(i) states:

> (i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (e.g., court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix refered to in the subparagraph l(i).

The taking of my vested personal property by

the court and giving it to the Defendants through a District Court Rule 13 summary judgment is a violation of the Due Process of Law provisions of the Fourteenth Amendment of the United States Constitution. References to that taking are throughout my filings in Blaine County, Oklahoma, District Court Cases CJ-2002-151 and CJ-2004-121 as well as Oklahoma Supreme Court Appeals # 99704 and # 101682.

The Pleading Statute Title 12 § 2012 mentions summary judgment four times: § 2012(A)(5.) [motion for], § 2012(B) [rules], § 2012(C) [application] and § 2012 [partial]. Nowhere in Title 12 § 2012 is the location of the rules for summary judgment specified. The rules do not have the gravitas of statutes. How can the application of the nonstatutory, discretionary District Court Rule 13 rules of summary judgment be considered "Due Process of Law" ?

As can be seen in Plaintiff / Appellant's Motion for an Extension of Time, filed approximately September 10, 2005, Plaintiff / Appellant was cut short on oral argument by the court at the hearing on summary judgment and not allowed to complete his oral argument. (Transcript of proceedings of August 11, 2005, before the Honorable Ronald G. Franklin, Exhibit C therein, page 5, lines 19 -21 and page 6, lines 8 - 9).

Also, in the transcript of the hearing on Plaintiff's Motion for Recusal of Judge Ronald G. Franklin, held on January 13, 2005, before the Honorable Ray Dean Linder, on page 51, lines 4 - 5, it says: "....and have lost a significant amount of income-producing property, ..." (underline by Appellant).

By this, the court has acknowledged the taking of vested personal property. That should cause a significant Fourteenth Amendment, Due Process of Law, red flag to go up.

PRAYER

By virtue of the Fourteenth Amendment of the Constitution of the United States and Article 2 Section 7 of the Oklahoma State Constitution and with Title 12, §§ 3236, 3237 in mind, Plaintiff / Appellant, Robert Olson, respectfully requests the opportunity to brief his side of the case to the Oklahoma Supreme Court.

Respectfully submitted,

s\b Dr. Robert Olson

Dr. Robert Olson
9022 E 60th St
Tulsa, Oklahoma 74145
918 252 1987

CERTIFICATE OF MAILING

I hereby certify that on this 2 nd day of February, 2006, a true and correct copy of the above and foregoing instrument was mailed via first class mail with proper postage fully prepaid thereon to:

Robert B. Sartin
Barrow & Grimm, P.C.
610 South Main,
Suite 300
Tulsa, Oklahoma
74119-1248
918 584 1600

Attorneys for
Defendants
Davis Operating
Company,
William H. Davis

Glenn A. Devoll
Julia C. Rieman
Gungoll, Jackson,
Collins, Box, &
Devoll, P.C.
P.O. Box 1549
Enid, Oklahoma
73702
580 234 0436

Attorneys for
Defendants /
Appellees Continental
Resources, Inc.,Harold
Hamm and Tom Luttrell

Stephen J. Krise
Assistant Attorney General
Oklahoma Attorney General's Office
Chief Litigation Section
4545 North Lincoln Boulevard, Suite 260
Oklahoma City, Oklahoma 73105 - 3498

Blaine County Court Clerk
212 N. Weigle
Watonga, Oklahoma 73772

Judge Ronald G. Franklin
114 West Broadway
Enid, Oklahoma 73702

Judge Ray Dean Linder
P. O. Box 185
Alva, Oklahoma 73717

s\b Robert Olson

Robert Olson
9022 E 60th St
Tulsa, Oklahoma 74145
918 252 1987

APPENDIX G

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Thursday, February 9, 2006

FILED
SUPREME COURT
STATE OF OKLAHOMA
FEB -9 2006
MICHAEL RICHIE
CLERK

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

100,560 American Yellow Checker Cab, Inc.; Tulsa Yellow Cab, Inc.; and Yellow Cab Inc. v. David Selver d/b/a Tulsa Taxi; and Yellow is Us, L.L.C.

Bankruptcy stay remains in effect. New report shall be filed by May 10, 2006.

101,237 (Cons w/ 102,405) Sarah M. Henry v. Barry J. Sims

Motion to allow time to complete briefing of counter appeal is granted.

102,115 Gary Daniel v. Chevrolet Motor Division, General Motors Corporation

Appellee's motion to indefinitely suspend proceeding is denied. Appellee

is granted to February 22, 2006 to file his brief.

102,214 Tracy l. Kizer, now Ford v. Marquice M. Kizer

Appellee's answer brief was accepted January 31, 2006.

102,279 Stephanie Turner v. Farm Properties, Inc., d/b/a The Farm Shopping Center, The Farm, an Oklahoma General Partnership

Appellant is granted to February 15, 2006 to file her brief.

102,356 Ronny Gene Altman, Trustee of the Ronny Gene Altman Revocable Trust, and S.N.S. Oil and Gas Properties, Inc., an Oklahoma Corporation, individually and on behalf of all other similiarly situated v. Apache Corporation

Appellant is granted to February 16, 2006 to file its brief.

102,398 Robert Olson v. Continental Resources, Inc., an Oklahoma corporation; Harold Hamm, an individual and President and Chief Executive Officer of Continental Resources, Inc.; Tom Luttrell, an individual and Vice President of Continental Resources, Inc. (Davis is left out?)

Consideration, if any, of Appellant's request for permission to file a brief under Oklahoma Supreme Court Rule 1.36(g) is deferred.

102,825 Melvin Chilcoat v. Gary L. Tate, et al.

Gary Peterson is permitted to withdraw. The court notes the address of Appellants pro se.

102,932 Hong Thi Vu and Lars Pham, as parents and next of kin to Ken vu Pham, Deceased v. Linda J. Truitt, M.D., and Linda J. Truitt, P.C.

Motion to remove from accelerated procedure is denied.

102,947 Jerome J. Sprenger v. Sonja Sue Austin, et al.

Appellee's Motion to dismiss is denied.

102,963 Lonnie Thomas v. Diane C. Wheat

Consideration of motion to strike plaintiff / Appellant's appellate filings and dismiss appeal and appellant's motion for leave to comply with Oklahoma Supreme Court Rules is deferred to reviewing court.

s\ James B. Winchester
VICE CHIEF JUSTICE

APPENDIX H

This Affidivit was presented in conjunction with the hearing on the Recusal of Judge Franklin held before the Honorable Ray Dean Linder on January 13, 2005 in Blaine County , Oklahoma. It also appears as an exhibit in Plaintiff's Petition for a Writ of Mandamus filed in the Oklahoma Supreme Court on January 18, 2005, #101,682 . And U.S. Supreme Court Case No. 05-1057.

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff, vs. CONTINENTAL RESOURCES, INC., an Oklahoma Corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc. DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants.	)	Case No. CJ-2002-151

AFFIDAVIT OF JULIA C. RIEMAN

STATE OF OKLAHOMA]
] ss:
COUNTY OF GARFIELD]

I, Julia C. Rieman, of the law firm Gungoll, Jackson, Collins, Box & Devoll, P.C., being of lawful age, and having first been duly sworn upon my oath, state as follows:

1. I am one of the attorneys for the Defendants, Continental Resources, Inc., Harold Hamm, and Tom Luttrell, in the above-captioned case. I have personal knowledge of the matters hereinafter referred to, and I am competent to testify as to these matters.

2. I prepared the notebook for the Court that is referenced in billing records of Gungoll, Jackson, Collins, Box & Devoll, P.C. for this case in an entry dated July 11, 2003.

3. The notebook contained *only* complete copies of cases that had been cited by the parties in the briefing on summary judgment and an index that listed the style and citation of the cases contained in the notebook.

4. I highlighted the language in the cases that had been directly quoted in the briefs and I highlighted the language in the cases that was relied on by me to support the legal argument made

in the briefs, even though not directly quoted. I did *not* provide any personal commentary, editorial notes, or make any additions or deletions to the copies of the cases.

5. I prepared the notebook on a Friday afternoon, July 11, 2003 as an aid to the Court for a hearing set for Wednesday July 16, 2003. Because of the time constraints and the number of cases included in the notebook (it took me two and a half hours to prepare a single copy) I only prepared one copy of the notebook; we did not even have a copy for ourselves.

6. I personally delivered the notebook to Judge Ronald G. Franklin. I told him that it was a notebook of the cases cited in our briefs and aside from "hello" and "goodby" that was the extent of my conversation with the Judge when I delivered the notebook.

7. The notebook did *not* include some draft order for the Judge to work from, as claimed by the Plaintiff, Mr. Olson. I included *nothing* in the notebook other than the highlighted copies of the cases cited in the briefs and an index that listed the cases.

Further, Affiant sayeth not.

s\ Julia C. Rieman

Subscribed and sworn to before me this 5 th day of January, 2005.

My Commission Expires:

s\ Virginia L. Schultz
NOTARY PUBLIC

Seal Stamp:
Virginia L. Schultz
Garfield County
Notary Public
#02003675
Exp. 3/17/06
In and for State of Oklahoma

/jcr
Mitchie/gad/continental/Olson

APPENDIX I

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON,	)	
Plaintiff,	)	Case No.
-vs-	)	
Continental Resources, Inc.	)	CJ-02-151
(et al. {correction by Olson})	)	
Defendant (s).	)	

TRANSCRIPT OF PROCEEDINGS

June 17, 20**04**

The Honorable Ronald G. Franklin, District Judge, Presiding, in and for Blaine County, Oklahoma.

APPEARANCES:

Plaintiff appears pro se

Mr. Glenn Devoll
Gungoll, Jackson, Collins & Box
P.O. Box 1549
Enid Oklahoma 73702
For Continental Resources

Mr. Robert Sartin
Barrow & Grimm
610 S. Main, Suite 300
Tulsa, Oklahoma 74119
For Davis Operating Company

Reported by:

Beth M. Malatin, RPR
Registered Professional Reporter
Garfield County Courthouse
Enid, Oklahoma 73701

Transcript Line [ ] Transcript page ( )

(2)

[1] THE COURT: CJ 2002-151 Olson v. Continental. Who [2] wants to go first ?

[3] MR.DEVOLL: I'd be happy to.

[4] THE COURT: All right.

[5] MR. DEVOLL: As the Court is well aware this case [6] is now over. We filed both an application for pre-appeal [7] attorney fees and costs as well as appeal related attorney [8] fees and costs. The amounts were set out in the [9] applications, but for the Court's benefit and for work that [10] we had done prior to the appeal we had incurred fees of [11] $31,616.25 and costs of $160.63 which makes a pre-appeal [12] total of $31,776.88. Our appeal related fees or costs were [13] 49,415. Bringing the absolute total to $41,191,88.

[14] I filed an affidavit in the case, Your Honor. I have [15] reviewed our time records. The rate charged for both [16] attorneys working on the case was $175 an hour which we [17] believe is a reasonable fee, hourly rate in the community [18]

which we work for the type of work that we have done. This [19] is, the Court knows, a somewhat specialized area, oil and [20] gas field. That's our normal hourly rate. As I say I think [21] that's comparable to other attorneys' rate that work in this [22] field in the local community. We are going to stand -- [23] Before I do that, no, I wanted to say one thing to the Court [24] and that is to some degree part of the work that we did was [25] generated or caused as a result of Mr. Olson's somewhat

(3)

[1] unorthodox pleadings that were filed in this case and his [2] actions, which I know is somewhat typical in a pro se case, [3] but nonetheless it required us to respond and to that degree [4] the time expended was somewhat unusual. But it was [5] generated by reason of the fact that Mr. Olson's pleadings [6] were of somewhat unorthodox nature. so we will stand on [7] our affidavit as the evidence in support of our attorney [8] fees request and we would ask the Court to award us, [9] Continental and Mr. Hamm, $41,191.88.

[10] THE COURT: All right. Why don't we just go ahead [11] and let you make your presentation. We'll let Mr. Olson go [12] last and make any inquiry of either one of you.

[13] MR. SARTIN: Thank you.

[14] Your Honor, Robert Sartin here representing the [15] Defendants Davis Operating Company and

William H. Davis. We [16] also filed our amended application on April 12th, 2004 [17] seeking attorney fees. Similar to Continental we have [18] pre-appeal attorney fees and costs and then we also have [19] post appeal attorney fees and costs. I will advise the [20] Court the Supreme Court has entered an order awarding us [21] appeal related attorney fees. Pre-appeal we had attorneys [22] fees totaling $19, 192.50. Pre-appeal we had expenses [23] totaling $111.66 and pre-appeal we had costs totalling [24] $540.77. For a total of $19,844.93. Post appeal or during [25] the appeal we had attorneys fees totaling $9,694. We had

(4)

[1] expenses totaling $196.52. We had costs totaling $414.65. [2] The post appeal or the post summary judgment total is [3] $10,305.17, which makes our total request $30,150.10. [4] Pre-appeal the attorneys rates, there were two different [5] attorneys that worked on the case. One was an associate [6] with our firm, about a third of his time was at $150 an [7] hour. He had been practicing law at that time about five [8] years. About two thirds of his time was $160 an hour. He [9] had been practicing law about six or seven years at that [10] time. The other time which is actually fairly minimal was [11] spent by me. When the case started my rate was $185 an hour [12] and then some of my time was $195 per hour. I have been [13]

practicing sixteen years. I believe those rates to be [14] standard in the community. I believe those to be fair rates [15] based on the expertise involved, the various factors that [16] would be present under Burk. [17] With regard to the appellate attorneys fees those were [18] done by basically two different attorneys, again myself I [19] have about half the time at my rate of $195; another [20] associate with the firm spent probably the other half of the [21] time and he is actually in his second year, his rate was [22] $125 for part of the appeal, and when he was in his first [23] year of practice the rate was $85 an hour. Again I would [24] represent to the Court that I believe those are fair rates [25] for an attorney of his experience in the community and those

(5)

[1] types of things. I would also testify that I believe on the [2] whole the time spent and the costs incurred were fair and [3] reasonable. I'll join Mr. Devoll in my testimony concerning [4] the unusualness of this case. It has been going on for a [5] long, long time. We similarly were forced to respond to a [6] number of different pleadings and they were quite unusual, [7] but we did so and like I say the time was reasonable. Thank [8] you.
[9] THE COURT: I'll note that each of you as [10] attorneys are considered to be under oath here for these [11] testimonies.

[12] Mr. Olson, do you care to give any testimony or make [13] any statement ?

[14] MR. OLSON: Well, I think both of these costs are [15] excessive, especially Continental Resources costs if you [16] compare it with the costs of the other attorneys. Other [17] that that there is not a whole lot I can say.

[18] THE COURT: Do you have any other evidence you [19] wish to present other that make the statement that you're [20] making ?

[21] MR. OLSON: No, sir.

[22] THE COURT: All right. The Court will take this [23] under advisement. I'm going to hold it until such time as [24] we do or do not get a mandate, then depending on, assuming [25] the mandate comes down I will enter an order that

(6)

[1] If the mandate, if they decide to rehear it or make some different decision we'll go from there. Okay. Now inasmuch [3] as you're here today on the asset hearing which has been [4] requested I would ask you to raise your right hand.[5] (Robert Olson sworn at this time.)

[6] THE COURT: I would ask that you adjourn perhaps [7] to the jury room if they are through and proceed.

[8] MR SARTIN: Your Honor, what we'll do is when we [9] finish we will come back and see you and address any issues [10] that we need.

[11] THE COURT: Okay. I will probably be back [12] downstairs by then.

[13] MR. OLSON: I have got one request. On [14] Continental Resources request for attorneys fees there was a [15] notation for a notebook that they made for you citing cites. [16] Would you be kind enough to give me a copy of that notebook ?

[17] THE COURT: Quite frankly I don't have that [18] anymore. Since the matter is over with I don't retain those [19] things.

[20] MR. OLSON: Do you have a copy of that notebook ?

[21] MR. DEVOLL: We might. We are going paperless. [22] That's why I'm hesitating. I don't know if I have got a [23] copy, a hard copy of it any longer. We're destroying files [24] and scanning them in as we go so that's the reason. If I do [25] I mean --

(7)

[1] MR. OLSON: A printout would work. If you have [2] scanned it in your files there is always a printout.

[3] MR DEVOLL: We might work it out. That will take [4] time.

[5] THE COURT: I'm sure there would be some costs [6] involved.

[7] MR DEVOLL: yeah, there would be.

[8] THE COURT: You may be excused.

* * * * *

APPENDIX J

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER OF THE COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
FEB 17 2004
MICHAEL S. RICHIE
CLERK

ROBERT OLSON)
Plaintiff / Appellant,)
vs.)
)
CONTINENTAL RESOURCES,)
INC., an Oklahoma corporation;)
HAROLD HAMM, individually)
and as President and Chief)
Executive Officer of Continental)
Resources, Inc.; TOM LUTTRELL,)
individually and as Vice)
President of Continental Resources,)

Case No.
99,704

Inc.; DAVIS OPERATING COMPANY, an Oklahoma Corporation; and WILLIAM H. DAVIS, individually and as President of Davis Operating Company,

Defendants / Appellees.

APPEAL FROM THE DISTRICT COURT
OF BLAINE COUNTY, OKLAHOMA

HONORABLE RONALD G. FRANKLIN,
TRIAL JUDGE

AFFIRMED (1)

Robert Olson,
Tulsa, Oklahoma,

Pro Se,
Plaintiff / Appellant,

Glenn A. Devoll,
Julia C. Rieman,
GUNGOLL, JACKSON,
COLLINS, BOX, &
DEVOLL, P.C.
Enid Oklahoma,

For Defendants /
Appellees,
Continental Resources,
Inc., Harold Hamm and
Tom Luttrell,

Robert B. Sartin,
Adam K. Marshall,
BARROW & GRIMM,
P.C.
Tulsa, Oklahoma,

For Defendants /
Appellees,
Davis Operaring
Company and
William H. Davis.

OPINION BY CAROL M. HANSEN, Judge:

1. Plaintiff / Appellant, Robert Olson, seeks review of the trial court's order granting summary judgment in favor of Defendants / Appellees, Continental Resources, Inc. and its officers (collectively Continental) and Davis Operating Company and its President (collectively Davis). We affirm because Olson submitted no evidentiary materials establishing a material issue of fact.

2. Olson sued Continental and Davis to quiet title to an overriding royalty interest (ORRI) in an oil and gas lease and to recover damages for "sham legal process" and "civil conspiracy," based upon the following allegations. The minerals in Section 17, Township 16 North, Range 11 West Indian Meridian, Blaine County, Oklahoma, were leased during the years 1981 to 1984, and Olson acquired an ORRI in the section in (2) 1984. The Matli # 1-17 well was drilled and completed as a well capable of producing oil and gas in commercial quantities in 1984.

3. Continental acquired a 52% undivided interest in the leases in 1993 and became the operator of the Matli # 1-17 well. In September 1998, Continental set a bridge plug and removed tubing from the well.

In February 1999, Continental agreed with Marshal Oil Corporation (Marshall) to acquire new leases in Section 17 and sent out letters to all of the working interest owners recommending the Matli # 1-17 be plugged. One of the working interest owners refused to consent to plugging, and Continental assigned its interest in the wellbore to that owner. That owner then assigned its interest in the well and the leases to Davis.

4. Continental filed new leases on Section 17 on September 13, 1999. On September 20, 1999, Davis recompleted the well and brought it back into commercial production. The royalty interest owners under the old leases accepted shut-in royalty payments and accepted royalties from subsequent gas production. In October 1999, Continental sued Davis and Olson to quiet title in its favor. Continental and Davis reached a settlement agreement and dismissed Olson from the suit. The settlement called for Continental and Davis to release the old leases and to operate under the new leases. The releases of the old leases were filed October 2, 2000. An (3) additional well, the Matli #2-17, has been drilled and put into production. Olson has demanded and been refused payment for his overriде.

5. Olson asserted his override on the old leases carried forward to the new leases. He asserted the Defendants used sham legal process by filing new leases over the valid old ones, by filing a lawsuit to drive interest owners out of their original interests, and by releasing the old leases after new ones had been purchased for the purpose of washing out his ORRI. He also asserted the Defendants conspired to release the old leases and operate under the new ones so as to claim his ORRI was no longer valid.

6. Continental and Davis answered and denied liability. Davis counterclaimed to recover from Olson the sum of $7,957.93, which it claimed it mistakenly paid to Olson as overriding royalty after the old leases expired or were released.

7. Continental and Davis moved for summary judgment, submitting into evidence the old leases, Olson's ORRI, the new leases, certain pleadings from the 1999 suit, the releases settling the suit, and affidavits from their officers. The old leases provided the lessee could surrender the lease by delivering a release or placing it on record in the proper county. The ORRI did not contain a clause providing it applied to extensions and renewals of the underlying leases. Continental's officer stated the Matli # 1-17 was no longer producing in paying quantities at the time Continental set (4) the bridge plug in 1998. The pleadings from the 1999 suit showed that all the working interest owners

were parties to the suit and signed releases of the old leases in settlement of the suit. Davis submitted copies of a check and spreadsheet showing the payment it asserts it mistakenly made to Olson was based on production after the leases were released.

8. Olson objected to the motions for summary judgment , but submitted no evidentiary materials whatsoever. The trial court granted summary judgment to Continental and Davis on Olson's claims, concluding,

> [T]he old leases have quite probabl[y] expired under the terms of said leases for failure to produce. In addition thereto; it is undisputed or admitted that after the new leases were acquired and [Davis] had acquired a[n] interest in the old leases that a quiet title action was filed in Blaine County, that the plaintiff was named a party defendant and that the plaintiff asked for no affirmative relief and as a result thereof, a settlement was reached in said case which resulted in the plaintiff being dismissed in that lawsuit and the old leases voluntarily released, thereby extinguishing any interest the plaintiff owned in the leases.

The trial court granted summary judgment to Davis on its counterclaim against Olson, rendering judgment in the amount of $7957.93. Olson appeals from this order without appellate briefs in conformance with the procedures for the appellate accelerated docket, Okla. Sup. Ct. R. 1.36, 12 O.S. 2001, Ch 15, App. 1. (5)

9. Because a grant of summary judgment involves purely legal determinations, we will review the trial court's decision under a de novo standard. *Carmichael v. Beller,* 1996 OK 48, 914 P.2d 1051, 1053. A party may move for summary judgment on the ground that the evidentiary material filed with the motion shows there is no substantial controversy as to any material fact. 12 O.S.Supp. 2002, Ch. 2, App. 1, Rule 13(a). A party opposing summary judgment must file a concise written statement of the material facts as to which a genuine issue exists, along with evidentiary material justifying the opposition to the motion. Rule 13(b). "All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed

admitted for the purpose of summary judgment .... unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material." *Id.* If the trial court determines there is no substantial controversy as to the material facts and one of the parties is entitled to judgment as a matter of law, the court shall render judgment for that party. Rule 13(e).

10. Davis and Continental's statements of fact were supported by admissable evidence. Olson's statement controverted their assertions but was not accompanied by supporting evidentiary material. Therefore, we will deem Davis and Continental's statements admitted for the purpose of summary judgment. (6)

11. An overriding royalty interest is created out of the working interest in an oil and gas lease. It is an interest in the lease out of which it is carved, and cannot be a property interest of greater dignity than the lease itself. *XAE Corp. v. SMR Property management Co.*, 1998 OK 51, 968 P.2d 1201, 1206-1207. Therefore, the overriding royalty interest

does not survive termination of the lease, absent fraud, breach of a fiduciary relationship, or an agreement otherwise. *DeMik v. Cargill,* 1971 OK 61, 485 P.2d 229, 233, and *Probst v. Hughes,* 1930 OK 57, 143 Okla. 11, 286 P. 875, 879.

12. The assignment of an overriding royalty interest out of the leasehold interest does not by itself create a fiduciary relationship between assignor and assignee. *Brannan v. Sohio Petroleum Co. (Brannan II),* 260 F.2d 621, 622 (10th Cir. 1958) (applying Oklahoma law).[1] Therefore, there is no relationship of trust and confidence between assignor and assignee which proscribes the lessee from acquiring a new lease, unburdened by the overriding royalty interest, from the owner of the land to take effect upon the expiration of the assigned lease. *Brannan v. Sohio Petroleum Co. (Brannan I),* 248 F.2d 316, 318 (10th Cir. 1957). However, a fiduciary relationship may arise from other factors, such as when no consideration is paid for an assignment (7) at the time of transfer and the assignor is to be paid from production. *Rees v. Briscoe,* 1957 OK 174, 315 P.26 758, 763.

13. The rights of an overriding royalty owner in future leases are protected if the assignment

---

1 *See also Hawkins v. Klein,* 1926 OK 819, 255 P.570, 575, 124 Okla. 161, and 3 SUMMERS, THE LAW OF OIL AND GAS, § 554, nn. 62-62 (Perm. ed. Supp. 2003).

contains a clause providing the override applies to extensions or renewals of the original lease from which it is carved. For example, in *Probst v. Hughes,* 1930 OK 57, 286 P. 875, 876, 143 Okla. 11, the agreement stated the overriding royalty interest would "apply as to all modifications, renewals of such lease or extensions that the assignee, his successors or assigns may secure."The court held a second lease taken by the lessee from the fee owner before expiration of the first lease was a renewal of the first lease, even though the well had ceased production and was plugged.

14. Similarly, in *Thornburgh v. Cole,* 1949 OK 167, 207 P.2d 1096, 201 Okla. 609, the assignment of an overriding royalty interest in a coal mining lease provided the override would apply to extensions, renewals, or modifications of the existing leases. The Court ruled future leases to the grantor of the interest or its successors would be bound by the override. 207 P.2d at 1100. The *Thornburgh* Court contrasted the facts in its case with those in *La Laguna Ranch Company v. Dodge,* 18 Cal.2d 132, 114 P.2d 351, 353. There "the lease provided that the lessee might surrender the lease by quit-claiming to the lessor. This was done and the overriding royalty interest was thus (8) extinguished, because the agreement did not provide that the overriding royalty should apply to renewal, extension or modification of the lease."

Thornburgh, 207 P.2d at 1100.

15. The facts in the record before us are like those in *La Laguna Ranch*. The oil and gas leases specifically provided the lessee could at any time surrender the lease or any part of it by delivering or mailing a release to the lessor, or by placing a release of record in the proper county. Olson's ORRI did not provide it applied to extensions or renewals of the original lease. There are no circumstances giving rise to a fiduciary relationship between Olson and Continental or Davis. Therefore, when all the working interest owners released the leases on Section 17, the lease from which Olson's ORRI was carved ceased to exist, and his ORRI did not survive the termination of the lease. The trial court did not err in granting summary judgment to Davis and Continental on Olson's claim for quiet title and to Davis on its claim for overpaid royalties to Olson.

16. Olson also sought to recover for sham legal process and civil conspiracy. Sham legal process is a criminal matter. It means the use of an instrument that is not lawfully issued and that purports to be a summons, subpoena, judgment, arrest warrant, search warrant, or other order of a court or that purports to assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, (9) powers, or privileges of any person or property. 21 O.S.Supp. 2003 § 1533(H)(1)(a) and (b). The statutes relating

to quiet title allow an attorney fee to the prevailing party if a party alleges the adverse claim is sham legal process as defined in § 1533 above. 12 O.S. 2001 § 1141(B). Olson submitted no evidence Continental or Davis used any instrument meeting the statutory definition of sham legal process. The trial court did not err in granting summary judgment against Olson on this claim.

17. In *Brock v. Thompson*, 1997 OK 127, 948 P.2d 279, 294 (footnotes omitted), the Court stated, "A civil conspiracy consists of a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. Unlike its criminal counterpart, civil conspiracy itself does not create liability. To be liable the conspirators must pursue an independently unlawful purpose or use an independently unlawful means. There can be no civil conspiracy where the act complained of and the means employed are lawful." Olson submitted no evidence Continental or Davis pursued an unlawful purpose or used unlawful means. The trial court did not err in granting summary judgment against Olson on this claim.

18. For the foregoing reasons, the trial court's judgment is AFFIRMED.

JOPLIN, J., and MITCHELL, P.J., concur.

APPENDIX K

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff.	)	
-vs-	)	Case No.
CONTINENTAL RESOURCES, INC., HAROLD HAMM, TOM LUTTRELL, DAVIS OPERATING COMPANY, and WILLIAM HENRY DAVIS, Defendants.	)	CJ-2002-151

TRANSCRIPT OF PROCEEDINGS

The Honorable Ronald G. Franklin, District Judge, Presiding, in and for Blaine County, Oklahoma.

July 17, 20**03**

APPEARANCES:

Plaintiff appears pro se

Mr. Peter Brolick
Barrow, Gaddis, Griffith & Grimm
610 S. Main, Suite 300
Tulsa, OK 74119
For Defendants Davis Operating Co. & William Davis

Mr. Glenn Devoll
Gungoll, Jackson, Collins & Box
323 W. Broadway
Enid, OK 73701
For Defts Continental Resources, Inc., Hamm, & Luttrell

Reported by:

Beth M. Malatin, RPR
Registered Professional Reporter
Garfield County Courthouse
Enid, Oklahoma 73701

Transcript Line [ ] Transcript Page ( )

(2)

[1] THE COURT: This will be Olson vs. Continental [2] Resources, Harold Hamm, Tom Luttrell, Davis Operating [3] Company, and William Davis. There have been -- Why don't we [4] announce our appearances for the record.

[5] MR. DEVOLL: Your Honor, Glenn Devoll on behalf of [6] Continental Resources, Mr. Luttrell, and Mr. Hamm.

[7] MR. BROLICK: Peter Brolick for Davis Operating [8] Company and William H. Davis.

[9] MR. OLSON: Robert Olson pro se.

[10] THE COURT: All right. There are numerous motions [11] pending, including a motion for summary judgment. There is [12] some motions for additional time to respond to some--or to [13] shorten some time on discovery near as I can tell. There is [14] a request by Mr. Olson to continue this matter I think for [15] the purpose of further discovery. I believe that is [16] correct.

[17] MR. OLSON: We are bumping up against the time [18] limits set in the original scheduling order.

[19] THE COURT: Well, what I'm going to deal

with [20] first is the motion for summary judgment which has been [21] filed and which has been responded to and which has been [22] replied to. And the Court has had an opportunity and has[23] reviewed all those materials. And I want to approach it [24] in this manner. There are individuals that are named in [25] this and I must tell you that I must deal with what is in

(3)

[1] the motion for summary judgment and response. I cannot go outside of the record for the purpose of ruling on this. [3] And as you all are aware that requires evidentiary proof to [4] be attached and part of both the motion for summary judgment [5] and the reply. And based on that I will find that the Court [6] has found or will find that there is no evidence that any of [7] the individuals acted outside of their corporate capacity as [8] individuals. And as such as to the individuals I am going [9] to sustain the motion for summary judgment because there is [10] just no proof that they have done any admissable proof, that [11] they have done anything else. The Court cannot speculate on [12] what might be found or what could come up. I have to deal [13] with what is in the motions. [14] As to Continental Resources, Mr. Olson's claim is [15] based upon his agreement that he had concerning the lease, [16] and I'm not going to -- the '84 lease or the -- whichever [17] lease, the '84 lease I believe. And your claim is [18] contingent upon that particular claim, and I think

everybody [19] agrees that if that lease would have gone away years ago [20] your rights would have gone away long ago. Everybody agrees [21] to that. And there was a settlement in the partition suit, [22] which basically as a result of that that lease was released. [23] I don't think there is any dispute as to what happened [24] there. Based on the evidence that has been presented in the [25] motions and in the response the Court has no other choice in

(4)

[1] this Court's opinion than to sustain that motion because [2] there is no evidence of anything other than a business [3] transaction that was performed by the companies in that [4] respect. So I am going to grant both motions for summary [5] or the motion for summary for all the parties and [6] render judgment accordingly. And I will grant you an [7] exception, Mr. Olson.

[8] MR. OLSON: Will the record, transcript of the [8] record be available ?

[10] THE COURT: Certainly. It's available for [11] purchase by any of you.

[12] MR. OLSON: Okay. And will you also include a [13] statement as to your reasoning as to --

[14] THE COURT: I have included that in my ruling. [15] Yes ?

[16] MR. DEVOLL: That was my question, Judge. Is the [17] Court going to issue an order ?

[18] THE COURT: I'll issue a written order.

[19] MR. BROLICK: Your Honor, we also, Davis

Operating [20] company also had a motion for summary judgment on a payment [21] that was made for about $7,000. If those leases were not [22] valid when we made that payment we would ask that we be [23] granted summary judgment on that motion too

[24] THE COURT: That's payments that you made --

[25] MR. BROLICK: After.

(5)

[1] THE COURT: After the fact.

[2] MR. BROLICK: Yes, Your Honor.

[3] THE COURT: I'm going to reserve ruling on that [4] particular motion until I have an opportunity to look at it. [5] I quite frankly wasn't concentrating on that. I need to go [6] back and look at that. Now what I will do I will give you [7] each an opportunity to provide me a proposed order including [8] findings of fact. I think that is what you are asking for.

[9] MR. OLSON: Yes,sir.

[10] THE COURT: And I'll give you each ten days, each [11] of you, to present to me proposed findings of fact and [12] conclusions of law for purpose of -- I will write my [13] own order however.

[14] MR. DEVOLL: Your Honor, I believe based on the [15] Court's ruling the balance of the motions that are [16] pending --

[17] THE COURT: Are moot. That would be correct. And [18] I'll give you a written, all parties on that particular one. [19] I apologize for not

covering it.

[20] MR. BROLICK: It was a small part of the whole [21] thing I understand. [22] May we be excused ?

[23] THE COURT: You may be excused.

[24] MR. DEVOLL: Thank you, Your Honor.

[25]

* * * * *

Certified by
s/ Beth Malatin
Beth M. Malatin, RPR
Registered Professional Reporter

APPENDIX L

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff, vs. CONTINENTAL RESOURCES, Defendant,	)	Case No. CF-2004-121

TRANSCRIPT OF PROCEEDINGS
CONDUCTED JUNE 16, 2005

BEFORE THE HONORABLE RONALD G. FRANKLIN, DISTRICT JUDGE,
In and for Blaine County, Oklahoma

APPEARANCES:

Mr. Robert Olson
9022 E 60th Street
Tulsa, OK 74145
For the Plaintiff

Mr. Robert B. Sartin
610 South Main, Suite 300
Tulsa, OK 74119

Ms. Julia C. Rieman
323 W. Broadway
Enid, OK 73701
For Continental Resources

Reported by:

Beth M. Malatin, RPR
Official Court Reporter
Garfield County Courthouse
Enid, Oklahoma 73701

[1] THE COURT: That takes us then to CJ 04-121.
[2] MR. OLSON: Yes,sir.
[3] THE COURT: Which I believe is your motion.
[4] We have had numerous motions filed in this case. The [5] motion that we are dealing with now is this one, what [6] date was the date of filing on that? Was that December -- [7] The date of filing is what I'm looking for.
[8] MR. OLSON: Approximately the 14th or 15th day of [9] December, I believe.
[10] THE COURT: All right. I have got it. Finally [11] got there. All right. Mr. Olson, you may proceed.
[12] MR. OLSON: Thank you, sir. This illustration [13] approximate assignment flow chart of the Matli 1-17 well in [14] Section 17. In the beginning Vulcan Energy owned a hundred [15] percent of the leases. I was the geologist that developed [16] that prospect. My override was assigned out of those base [17] leases. After the Matli well was successfully drilled, [18] satisfied

the amendment {habendum!] clause, my override became a vested [19] established mineral estate. And as such Continental [20] Resources and Davis by releasing the leases they had they [21] were releasing sub leases, not the base lease. As long as [22] there is a claim from the base lease, they cannot destroy [23] that claim on the basc lease, my override, unless the [24] entire lease is forfeited or extinguished by total [25] abandonment. they did neither. And that concept is

[1] followed in case law in Texas, West Virginia, Pennsylvania [2] and Wyoming as well as Oklahoma and Oklahoma the case is {3] Caudel v. Branden 176 Oklahoma 394.

[4] On summary Judgments, summary judgments are not [5] favored. All conclusions drawn from the evidentiary {6] materials must be viewed in the light most favorable to the [7] opposing party which was me. The question on whether the [8] lease expired or was extinguished or surrendered is a [9] controversial part of the summary judgment order. A [10] reasonable person might reach a different conclusion from [11] the facts suggested by the motion for summary judgment. [12] Granting summary judgment would be improper. I have shown [13] your summary judgment order to a significant number of [14] people. Representative Fred Perry would draw different [15] conclusions.

I have submitted it or my brother had a clerk [16] in one of the Texas Appellate District Appeals Court clerks and [17] she said that the summary judgment was improper. The summary [18] judgment was pronounced before adequate discovery. The [19] summary judgment cannot reach the merits that are not [20] available, if those merits are not available to the Court. [21] We didn't see the operating agreement. We didn't see the [22] participation agreement. We didn't see the agreements that [23] Continental Resources tried to work on prior to Davis [24] acquiring their interest. If the merits don't appear [25] before the Court how can the Court make a summary judgment

[1] on the merits. I say the Court cannot.
[2] Material facts were disputed. I significantly [3] disputed those material facts. The surrender clause in an [4] oil and gas lease is primarily a primary term [5] consideration. The surrender clause looks at actual [6] surrender of the acreage to reduce delay rental payments. [7] And there was no acreage released. So the surrender clause [8] was not applicable because there was no acreage [9] surrendered.
[10] And the word probably. The word probably in that 11] summary judgment order indicates an ambiguity in the [12] facts. The word probably

gives the summary judgment order [13] a floating basis, not an absolute basis that is required by [14] summary judgment. We have discussed some of these [15] already. The points of law that were missed in the summary [16] judgment. The surrender clause we have discussed that. [17] Estate, when the well is drilled and completed the mineral [18] estate is established in my name for that override. Okay. [19] The lease assignment from the base lease where assignments [20] were not a hundred percent are sub leases. Davis and [21] Continental Resources had sub leases. They did not have [22] the base lease.

[23] Fiduciary oil and gas lease contract relationships. I [24] will discuss that in a minute. Fiduciary is imposed by [25] power and control. You will grant that, would you not?

Page 4

[1] THE COURT: Proceed.

[2] MR. OLSON: And the viability of the legal [3] position of the base leases. Until all activity ceases on [4] the lease, until the chain of operatorship is broken, until [5] everyone leaves and that lease is available to be leased by [6] a third party, the base lease is still viable and the chain [7] of operatorship through from Vulcan all the way to [8] Continental Resources and Davis and whoever is operating it [9] is not broken. And you pronounced summary judgment [10] before we had

oral argument on summary judgment. that [11] restricts my access to present my case. And I asked you to [12] on your summary judgment order to cite the law that you [13] relied on to make your legal decisions and you're duty [14] bound to do that and it wasn't done.

[15] And in 121 which we are discussing now is contrary to [16] Title 12 Oklahoma Statutes Section 100. The contract [17] structure in an oil and gas deal, the promoter and his [18] geologist determine a likely spot to find oil and gas. [19] Promoter buys the oil and gas leases at a royalty say 18.75 [20] just for an example number. Agreement between the promoter [21] and the geologist, the geologist is to receive one and a [22] half percent override, which is what my agreement was. And [23] say the promoter wants to keep two and a half percent so [24] this brings the total royalty burden to 22.75 percent. [25] That's before the working interest people ever are brought

[1] into the picture. This leaves a net revenue of 77.25. At [2] 77.25 when people participate in that they participate in [3] that subject to the net revenue, which means they agree to [4] pay all royalty burdens, override and land owner royalties [5] up to 77.25 percent. So the override owner is a third [6] party beneficiary of the participation agreement.

[7] Now the participation agreement denotes

what will be [6] done in an oil and gas deal. The operating agreement [9] determines how that will be done. So the participation [10] is the dominate agreement in an oil and gas deal. [11] The operating agreement is subject to the participation [12] agreement which is subject to the net revenue, which puts [13] the override owner as a third party creditor beneficiary of [14] the operating agreement subject to all fiduciary [15] benefits of being a beneficiary of the contract. All the [16] fiduciary requirements. The operator has that fiduciary [17] duty to the override, not to take it, and that was done [18] here.

[19] This is from the State Commissioners Land Office in [20] Oklahoma v. Amoco Production Company. They held that after [21] production is found in time to preserve the lease the [22] question with reference to its extensive operation over all [23] the premises described thereon is one of diligent and [24] proper development according to the covenants contained in [25] the lease. It is a question of forfeiture not one of

[1] expiration. So in order for my override to disappear you [2] have to declare that entire lease forfeit. An entire [3] lease, entire ground, the entire premises forfeit such that [4] it could be leased by a third party. That's not been done. [5] And it can't be done because they are still operating it.

[6] And the courts are statutorily mandated to avoid the effect [7] of forfeiture by giving consideration to compelling [8] equitable circumstances. I owned that override. That is a [9] compelling equitable circumstance. Continental Resources [10] value that lease at 11.9 BCF left in it. That means my [11] override was worth about $937,000 according to the way they [12] valued it. That's a significant amount of money being [13] improperly taken from me. Significant amount of value. It [14] shouldn't have been done. And it was not done on the [15] merits any place. Summary judgment was not on the merits [16] and the Court of Civil Appeals decision was not on the [16] merits. The Court of Civil Appeals decision was purely an [18] alleged Rule 13 violation. It did not reach the merits. [19] And the certiorari, of course that didn't reach the merits [20] either. That's not considered merits. So the decision, my [21] loss in case 151 was not on the merits. So I have a proper [22] right to refile the case and I have refiled it under [23] 2004-121.

[24] THE COURT: Mr. Olson, just so I can be [25] clear, my understanding is your complaint is that my

[1] sustaining the motion for summary judgment in 151 did not [2] reach the merits and therefore you are free to persue this [3] matter in the new case. Is that correct?

[4] MR. OLSON: Would you rephrase that again?
[5] THE COURT: That my sustaining the motion [6] for summary judgment did not reach the merits of the case [7] and therefore you're free to file a new case under [8] CJ 04-121. Is that your position?
[9] MR. OLSON: When did you sustain?
[10] THE COURT: The 121, the motion for summary [11] was sustained I believe. It was appealed, [12] affirmed by the Court of Appeals, certiorari was denied and a [13] mandate was issued.
[14] MR. OLSON: Yes, sir.
[15] THE COURT: While you don't agree and some [16] of your folks don't agree that that was right, our Civil [17] Court of Appeals agreed it was right and our Supreme Court [18] of the State of Oklahoma said I was proper in doing that. [19] Now so my question to you is, I am gathering what you are [20] trying to say is is because it was a Rule 13 violation the [21] way you perceive it that you are free to go ahead and file [22] another action on the same facts because the issues were [23] not reached. Is that your position?
[24] MR. OLSON: Yes, sir.
[25] THE COURT: Okay. That's what I'm trying to

[1] get to. That is your position, correct?
[2] MR. OLSON: Yes, sir.
[3] THE COURT: Is there any other --- Now put

[4] that aside. I understand that issue. Is there any other [5] issue that you're raising why the Court erred in dismissing [6] CJ 04-121?

[7] MR. OLSON: That goes back to the notebook [8] episode where the opposing counsel supplied you with a [9] notebook on this case.

[10] THE COURT: That also was overruled by me, [11] by the presiding district judge, and certiorari was denied by [12] the Supreme Court. They declined to hear it.

[13] MR. OLSON: They voted seven to two to let [14] you get away with it.

[15] THE COURT: Otherwise seven of the Supreme [16] Court Justices of Oklahoma agreed that I was correct in not [17] recusing to descent.

[18] MR. OLSON: No, sir. they agreed not to [19] disqualify you for that.

[20] THE COURT: That's what I mean.

[21] MR. OLSON: That's quite different from [22] saying that you did it properly.

[23] THE COURT: They basically said I did not [24] have to disqualify.

[25] MR. OLSON: Yes.

[1] THE COURT: All right. I mean I'll buy that, [2] sure.

[3] MR. OLSON: Okay. When you accepted that [4] notebook ---

[5] THE COURT: That has been decided. It's [6] over, Mr. Olson. That portion is over. I'm not

[7] disqualifying and they said I didn't have to.
[8] MR. OLSON: That's fine.
[9] THE COURT: And it's not an issue in this
[10] case. Where we are right now is, and you need to [11] understand the motion for summary judgment has been [12] sustained in 151. The mandate has been issued. that order [13] is final. Even I cannot change that order. that is res [14] judicata, otherwise you are prohibited from filing any [15] further action on those set of facts that you presented in [16] 151. I believe that to be the law. Do you believe it not [17] to be the law?
[18] MR. OLSON: One hundred says that if I lost [19] not on the merits I have the right to refile it. So I have to [20] prove that my loss was not on the merits. If I can [21] prove that my loss was not on the merits ---
[22] THE COURT: I understand your argument now.
[23] MR. OLSON: Okay. Then I have the right
[24] to refile.
[25] THE COURT: All right. anything further you

[1] want to say on that respect. I appreciate you clearing [2] that up. I now understand where you're headed. Okay. [3] Anything further?
[4] MR. OLSON: No.
[5] THE COURT: Care to respond to that, Miss
[6] Rieman?
[7] MS. RIEMAN: Your Honor, first I apologize,

[8] I understood that the motion of Mr. Olson that was going to [9] be heard today was his motion requesting a hearing on his [10] motion for new trial and we responded to that, that we [11] thought the request was mooted by the mandate and by the [12] Supreme Court's refusal to issue the writ to remove Your [13] Honor from this case. As you pointed out to Mr. Olson the [14] summary judgment is final, it's res judicata, and they [15] found that the alleged improprieties Mr. Olson complains of [16] were not sufficient to justify disqualification, so I [17] believe the issues raised by Mr. Olson's motion for new [18] trial are moot and it should be denied.

[19] THE COURT: Care to respond?

[20] MR. SARTIN: I just want to further what Miss [21] Rieman said, Your Honor. I believe that a summary judgment [22] motion is on the merits. I think that by granting summary [23] judgment the Court is saying that there is not any dispute [24] as to any material fact and that as matter of law judgment [25] can be entered. That necessarily requires a review of the

[1] facts, a review of the merits of the Plaintiff's claim [2] having granted that I think it is on the merits and I think [3] it is res judicata, barred to be brought again.

[4] THE COURT: Care to respond to that?

[5] MR. OLSON: I think that it is not res

[6] judicata. I think I can prove that the summary judgment order [7] was not on the merits and the Court of Civil Appeals [8] decision was not on the merits. And so since neither one [9] of these actions reached the merits of the case that I have [10] a proper right to refile the case.

[11] THE COURT: All right. Thank you very much, [12] Mr. Olson. I understand where you're coming from. The [13] Court is of the opinion however that it is res judicata on [14] the mandate and absence new evidence of which I have heard [15] none there is no right to proceed any further. And as such [16] I'm going to deny your motion for a new trial and grant you [17] an exception.

[18] MR. OLSON: Because I definitely am going to [19] object to it and I'm definitely going to appeal it.

[20] THE COURT: I assumed that you would, [21] Mr. Olson.

[22] Anything further?

[23] MR. SARTIN: No, Your Honor.

[24] THE COURT: Miss Rieman, do you want to try [25] to draw a journal entry to that?

[1] MS. RIEMAN: Certainly.

[2] THE COURT: Just a simple denial is what it [3] is, and exception allowed.

* * * * *

[1] STATE OF OKLAHOMA
[2] COUNTY OF GARFIELD
[3] CERTIFICATE
[4]

[5] I, Beth M. Malatin, Registered Professional [6] Reporter duly licensed and qualified in and for the State of [7] Oklahoma, DO HEREBY CERTIFY that on the 16th day of June, [8] 2005, at the County Courthouse in the city of Watonga, County [9] of Blaine, State of Oklahoma, commencing at 10:00 a.m. , that [10] I reported by means of stenotype, a true, correct and [11] complete verbatim record of the testimony then and there [12] conducted in the foregoing-styled cause.

[13] I FURTHER CERTIFY that since said date I have [14] correctly transcribed my stenographic notes then and [15] there so taken; and, further, that the foregoing, [16] consisting of 14 pages is a true, correct and [17] complete transcript of the record which I made at such [18] hearing, as reflected by my stenographic notes then [19] and there so taken.

[20] IN WITNESS WHEREOF, I hereunto set my hand and [21] affix my official stamp at Enid, OK this 6th day of July, 2005.

s\b Beth M. Malatin
Beth M. Malatin,
RPR Cert #899

Beth M. Malatin
Oklahoma Certified
Shorthand Reporter
Certificate No. 0899
Exp. Date: December 31 200-

APPENDIX L(a)

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff, vs. CONTINENTAL RESOURCES, Defendant.	)	Case No. CJ-2004-121

TRANSCRIPT OF PROCEEDINGS
CONDUCTED AUGUST 11, 2005

BEFORE THE HONORABLE RONALD G. FRANKLIN, DISTRICT JUDGE, In and for Blaine County, Oklahoma

APPEARANCES:
Mr. Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145
For the Plaintiff

Ms. Julia C. Rieman
323 W. Broadway
Enid, OK 73701
For Continental Resources
Mr. Robert B. Sartin
610 Soith Main, Suite 300
Tulsa, OK 74119

Reported by:

Beth M. Malatin, RPR
Official Court Reporter
Gasfield County Courthouse
Enid, Oklahoma 73701

[1] THE COURT: We are back then to CJ 04-121, [2] Olson v. Continental Resources, Harold Hamm, and Tom [3] Luttrell, et al, Motion for summary judgment filed I [4] believe--- Mr. Olson, do you want to come on up? --- [5] filed by Continental.

[6] MS. RIEMAN: Yes sir. Very briefly ---

[7] THE COURT: Just a minute here. Let [8] Mr. Olson get up here.

[9] MR.SARTIN: Your Honor, may I also note my [10] appearance for the record. Robert Sartin here for Davis [11] Operating Company and William H. Davis.

[12] THE COURT: Thank you. All right. This is [13] Continental Resources, Harold Hamm, Tom Luttrell's motion [14] for summary judgment. The Court has previously sustained a [15] motion for summary judgment on behalf of Davis Operating [16] Company and William H. Davis which is on appeal I believe. [17] Is that correct?

[18] MS. RIEMAN: That's correct, Your Honor. [19] Well, actually I think yours was a motion to dismiss, [20] wasn't it?

[21] MR. SARTIN: Your Honor, ours was a [22]

dismissal motion.
[23] THE COURT: That is correct.
[24] MS. RIEMAN: This is Continental, as the [25] Court notes Continental, Harold Hamm, and Tom Luttrell's

[1] motion and this motion is asking the Court to grant us [2] summary judgment on the basis of clained{s} preclusion. The [3] Court is very familiar with the facts of this case. I'm [4] not going to go over all those. As we have started in our [5] reply we think this is a very simple matter. The one thing [6] I did want to bring to the Court's attention because its [7] not mentioned in the briefs, Mr. Olson's argument and [8] response to this motion is essentially that the summary [9] judgment in the 2002 case was not on the merits. There [10] are cases cited in the brief at page five that hold that [11] summary judgment is always on the merits, regardless of the [12] inadequacy of the response of the non-moving party. It's [13] not a default judgment. The thing that I didn't point out [14] in my briefing that I would like to point out now and this [15] is from 2004 Supreme Court case, 2004 OK 84. The case is [16] Head v. McCracken. And this is probably more for [17] Mr. Olson's benefit. I'm sure the Court is aware of this. [18] But on review summary judgment is reviewed by a de novo [19] standard. And what the Court says in this case that means [20] is that in such a review the

Appellate Court engages in a [21] plenary independent and nondeferential reexamination of the [22] trial court's ruling. The summary judgment was affirmed by [23] the Court of Appeals in the first appeal. It was affirmed [24] on the basis of the recird that went up to that court which [25] did not include this now infamous notebook that has caused

[1] Mr. Olson difficulty in this case. That Court had to look [2] at the record and determine whether or not Continental, [3] Harold Hamm and Tom Luttrell were entitled to summary [4] judgment, without any di{e}fference to the decision made by [5] this Court, and it affirmed summary judgment. Cert was [6] denied. Mandate issued. That judgment is final. This [7] petition asserts the same claims. We're entitled to [8] summary judgment on claimed{s} preclusion basis. Thank you, [9] Your Honor.

[10] THE COURT: Mr. Olson, you may respond.

[11] MR. OLSON: Yes sir. The claim that the [12] Court of Civil Appeals affirmed it is correct but how the [13] Court of Civil Appeals affirmed it is germane. They [14] affirmed it on a Rule 13 violation. They assumed or [15]asserted a Rule 13 violation. It actually didn't exist. [16] But they affirmed it on basis of a perceived Rule 13 [17] violation which does not go to the merits. And certiorari doesn't go to the merits.

[19] Now I would like to dispute the discussion of [20] plaintiff or the undisputed facts that the plaintiff or that [21] defendants assert here. On August 11th, 2003 this Court [22] granted summary judgment as to the defendants on all of [23] plaintiff's claims against them in case CJ 2002-151. [24] Plaintiff contends that none of his complaints had been [25] adjudicated because the original summary judgment was not

[1] on the merits. The statement from Judge Franklin's [2] Conclusions of law based on the admissable evidence {'} is [3] undisputed that the old leases have quite probably expired [4] under the terms of said leases for failure to produce{'}.
[5] First, the word {'} probably {'} indicates ambiguity in the [6] legal status of the leases. Ambiguity in the Court's [7] mind. Second, the well was completed as a producing gas [8] well, the addendum {habendum} clause was satisfied, and at that time [9] the base leases were converted into a vested mineral estate [10] along with my override. So, for that, when it's converted [11] into a vested mineral estate it's the estate forfeiture [12] statutes that apply, not lease expiration statutes.
[13] And then in number nine on your summary judgment you [14] say plaintiff's right arose solely from the old leases and [15] remain only through the term of the old leases which [16] provided that

the lessee had the right to unilaterally [17] terminate a lease by a voluntary release thereof. That [18] would be fine except they didn't have leases. They had [19] assigned subleases. The release of subleases does not [20] affect the status of the base lease.

[21] THE COURT: Mr. Olson, you know we have [22] argued this case and the facts of the case. What we're [23] needing to argue here is the legal issue concerning whether [24] your claim is precluded by the Supreme Court. I have heard [25] you argue these very same things numerous times and I don't

Page 5

[1] need to hear them again. So I would appreciate it if you [2] would keep your argument to the legal issues in front of [3] the Court and that is is{n} this case precluded by the fact [4] that it has been, all the facts were in the old case. It [5] was affirmed. Certiorari denied. Does that preclude you [6] from proceeding. That's what I want to focus on.

[7] MR. OLSON: Well, Your Honor, in order to [8] focus on that I believe it's necessary to contrast what [9] actually happened versus the actual legal situation on the [10] ground concerning those leases. Your summary judgment was [11] done on lease expiration and voluntary release of leases.

[12] THE COURT: I understand. that's what went [13] up and was in the summary judgment ---

[14] MR. OLSON: Yes.
[15] THE COURT: That's what was affirmed.
[16] MR. OLSON: That's what was affirmed.
[17] That is a fictitious legal situation on the ground [18] because ---
[19] THE COURT: Mr. Olson, I don't want to cut [20] you short but the Appellate Court and the Supreme Court [21] have both said it's not fictitious. thta is the rule and [22] that is the case. What I held is what they held. You're [23] precluded from going any further on that the way I [24] understand the Supreme Court's rulings. And as such based [25] that I am going to sustain their motion for summary

Page 6

[1] judgment because you are precluded. I find nothing in your [2] responses that indicate there is anything that has not been [3] litigated or you did not have the opportunity to litigate [4] in the first case. So there is nothing new that you're [5] raising and as such I will sustain the motion for summary [6] judgment and grant you an exception.
[7] MS. RIEMAN: Thank you, Your Honor.
[8] MR. OLSON: I do object, Your Honor, because [9] I was not allowed to complete my ---
[10] THE COURT: I understand and I'll grant you [11] an exception to that. You may be excused.
[12] MS. RIEMAN: Thank you.

[13] THE COURT: Do you want to draw a journal [14] entry please?
[15] MS. RIEMAN: Yes, sir.

* * * * *

Page 7

[1] STATE OF OKLAHOMA
[2] COUNTY OF GARFIELD
[3]
[4] CERTIFICATE
[5] I, Beth M. Malatin, Registered Professional [6] Reporter duly licensed and qualified in and for the State [7] of Oklahoma, DO HEREBY CERTIFY that on the 11th day of [8] August, 2005, at the County Courthouse in the city of [9] Watonga, County of Blaine, State of Oklahoma, commencing at [10] 10:00 a.m., that I reported by means of stenotype, a true, [11] correct and complete verbatim record of the testimony then [12] and there conducted in the foregoing-styled cause.
[13] I FURTHER CERTIFY that since said date I have [14] correctly transcribed my stenographic notes then and there [15] so taken; and, further, that the foregoing, consisting of [18] 8 pages is a true, correct and complete transcript of the [17] record which I made at such hearing, as reflected by my [18] stenographic notes then and there so taken.
[19] IN WITNESS WHEREOF, I hereunto set my hand and [20] affix my official stamp at Enid, OK

this 22nd day of AugusL9a)t, 2005.

s\b Beth M. Malatin

Beth M. Malatin RPR Cert # 899

Beth M. Malatin
Oklahoma Certified Shorthand Reporter
Certificate No. 0899
Exp. Date: December 31, 2006

APPENDIX M

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.S. Const. Amend. 14, § 1 (2005)

Sec. 1. [citizens of the United States]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C.A. § 455 (a)

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

APPENDIX N

Oklahoma Statutes Involved

Oklahoma Court Rules and Procedure
State
2005

THOMSON
WEST

CHAPTER 16

VACATION AND MODIFICATION OF JUDGMENTS BY TRIAL COURT

TITLE 12, OKLAHOMA STATUTES

Section 1031. **District court, power to vacate or modify its judgments, when**

The district court shall have power to vacate or modify its own judgments or orders within the times prescribed hereafter:

1. By granting a new trial for the cause, within the time and in the manner prescribed in Sections 651 through 655 of this title;

2. As authorized in subsection C of Section 2004 of this title where the defendant had no actual notice of the pendency of the action at the time of the filing of the judgment or order;

3. For mistake, neglect, or omission of the clerk

or irregularity in obtaining a judgment or order;

4. For fraud, practiced by the successful party, in obtaining a judgment or order;

5. For erroneous proceeding against an infant, or a person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings;

6. For the death of one of the parties before the judgment in the action;

7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending;

8. For errors in a judgment, shown by an infant in twelve (12) months after arriving at full age, as prescribed in Section 700 of this title; or

9. For taking judgments upon warrants of attorney for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.

R.L.1910, Section 5267; Laws 1969, c. 304, Section 3, emerg. eff. April 28, 1969; Laws 1999, c. 293, Section 9, eff. Nov. 1, 1999.

Section 1031.1. **Authorization to correct, open, modify or vacate judgments — Time — Notice**

A. A court may correct, open, modify or vacate a judgment, decree, or appealable order on its own initiative not later than thirty (30) days after the judgment, decree, or appealable order prepared in

conformance with Section 696.3 of this title has been filed with the court clerk. Notice of the court's action shall be given as directed by the court to all affected parties.

B. On Motion of a party made not later that thirty (30) days after a judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title has been filed with the court clerk, the court may correct, open, modify, or vacate the judgment, decree, or appealable order. If the moving party did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion to correct, open, modify, or vacate the judgment, decree, or appealable order may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party. The moving party shall give notice to all affected parties. A motion to correct, open, modify, or vacate a judgment or decree filed after the announcement of the decision on all issues in the case but before the filing of the judgment or

decree shall be deemed filed immediately after the filing of the judgment or decree.

C. After thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order shall be by petition in conformance with Section 1033 of this title.

Laws 1969, c. 304, Section 1, emerg. eff. April 28, 1969; Laws 1990, c. 251, Section 15, eff. Jan. 1, 1991; Laws 1991, c. 251 Section 19, eff. June 1, 1991; Laws 1993, c. 351, Section 25, eff. Oct. 1, 1993; Laws 1994, c. 343, Section 6, eff. Sept. 1, 1994; Laws 1997, c. 102, Section 9, eff. May 1, 1997; Laws 1999, c. 293, Section 10, eff. Nov. 1, 1999.

Section 1032. Proceedings to be by motion — Notice

The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action.

R.L.1910, Section 5268; Laws 1969, c. 304, Section 4, emerg. eff. April 28, 1969; Laws 1993, c. 351, Section 26, eff. Oct. 1, 1993.

Section 1033. Proceedings by petition, when — Summons

If more than thirty (30) days after a judgment,

decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order, on the grounds mentioned in paragraphs 2, 4, 5, 6, 7, 8, and 9 of Section 1031 of this title, shall be by petition, verified by affidavit, setting forth the judgment, decree, or appealable order, the grounds to vacate or modify it, and the defenses to the action, if the party applying was defendant. On this petition, a summons shall issue and be served as in the commencement of a civil action.

R.L.1910, Section 5269; Laws 1999, c. 293, Section 11, eff. Nov 1, 1999.

Section 1034. **Trial of application to vacate**

The court may first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action.

R.L.1910, Section 5270.

Section 1035. **Liens and securities preserved**

If a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

R.L.1910 Section 5271; Laws 1990, c. 251, Section 16, eff. Jan. 1, 1991.

Section 1036 **Suspending proceedings —Bond**

The party seeking to vacate or modify a judgment or order, may obtain an order suspending proceedings on the whole or part thereof; Which order may be granted by the court, or any judge thereof, upon its being rendered probable, by affidavit, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified. On the granting of any such order, the court, or judge, may require the party obtaining any such order to enter into an undertaking to the adverse party to pay all damages that may be caused by granting of the same.

R.L.1910, 5272.

Section 1037. **Suspension where judgment given prematurely**

When the judgment was rendered before the action stood for trial, the suspension may be granted, as provided in the last section,[1] although no valid defense to the action is shown; and the court shall make such orders, concerning the executions to be issued on the judgment as shall give to the defendant the same rights of delay he would have had if the judgment had been rendered at the proper time.

R.L.1910, Section 5273

1. Title 12, Section 1036.

Section 1038. **Limitations**

Proceedings to vacate or modify a judgment, decree, or order, for the causes mentioned in paragraphs 4, 5, and 7 of Section 1031 of this title must be commenced within two (2) years after the filing of the judgment, decree or order, unless the party entitled thereto be an infant, or a person of unsound mind and then within two (2) years after removal of such disability. Proceedings for the causes mentioned in paragraphs 3 and 6 of Section 1031 of this title, shall be within three (3) years, and in paragraph 9 of Section 1031 of this title, within one (1) year after the Defendant has notice of the judgment, decree or order. A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby.

R.I.1910, Section 5274; Laws 1990, c. 251, Section 17, eff. Jan. 1, 1991;Laws 1991, c. 251, Section 20, eff. June 1, 1991; Laws 1993, c. 351, Section 27, eff. Oct. 1, 1993.

APPENDIX O

Exerpts from the

OKLAHOMA RULES OF PROFESSIONAL `CONDUCT

Effective July 1, 1988

Including Amendments Received Through November 1, 2004

Research Notes

Annotations to the Oklahoma Rules of Professional Conduct are available in Oklahoma Statutes Annotated, Title 5, Chapter 1, Appendix 3-A, and in OK-RULES database on Westlaw. Westlaw may also be used to search for specific terms in court rules or to update court rules. See the OK-RULES and OK-ORDERS Scope Screens for further information.

Amendments to these rules are published , as received, in the P.3d and Oklahoma Decisions advance sheets.

RULE 1.2 SCOPE OF REPRESENTATION

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d) and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision

whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitation on the lawyer's conduct.

[Adopted effective July 1, 1998.]

RULE 3.3 CONDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

(3) fail to disclose to the tribunal legal authority

in the controling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take the following remedial measures.

(A) When a client has offered false evidence, the lawyer shall promptly call upon the client to rectify the same; if the client refuses or is unable to do so, the lawyer shall promptly reveal its false character to the tribunal; or

(B) When a person other than a client has offered false evidence, the lawyer shall promptly reveal its false character to the tribunal.

(b) The duties stated in paragraph (a) are continuing and apply even if compliance required disclosure of information otherwise protected by Rule 1.6.

Misleading legal Argument. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in Paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controling jurisdiction which has not been disclosed by the opposing party. The underlying concept is

that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other decision maker except as permitted by law or the rules of the tribunal.

(b) in an adversary proceeding, communicate or cause another to communicate as to the merits of the cause, with a judge or an official before when the proceeding is pending except:

(1) in the course of the official proceeding in the cause;

(2) in writing if the lawyer promptly delivers a copy of the writing to the opposing counsel or to the adverse party if not represented by a lawyer;

(3) orally upon notice to opposing counsel or to the adverse party if not represented by a lawyer; and

(4) as otherwise authorized by law; or

(c) communicate directly or through another with a juror or prospective juror except as permitted by law or the rules of court; or

(d) engage in conduct intended to disrupt a tribunal.

[Adopted effective July 1, 1988.]

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversly on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

[Adopted effective July 1, 1988.]

APPENDIX P

Exerpt from the

CODE OF JUDICIAL CONDUCT

Effective November 1, 1997

Including Amendments received through November 1, 2003

Research note

Annotations to the Code of Judicial Conduct are available in Oklahoma Statutes annotated, Title 5 Chapter 1, Appendix 4, and in the OK-RULES database on Westlaw. Westlaw may also be used to search for specific terms in court rules or to update court rules. See the OK-RULES and OK-ORDERS Scope Screens for further information. Amendments to these rules are published, as received, in the P.3d and Oklahoma Decisions advance sheets.

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. [Effective November 1, 1997.]

CANON 2. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.

A. A judge should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, political or other relationships to influence the judge's judicial conduct ot judgment. A judge

should not lend the prestige of judicial office to advance the private interests of the judge or others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.
[Effective November 1, 1977.]

CANON 3. A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In performance of those duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge should require order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom he the judge deals in official capacity, and should require similar conduct of lawyers, and of his staff, court officials and others

subject to the judge's direction and control.

(4) A judge should perform judicial duties without bias or prejudice. A judge should not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit staff, court officials and others subject to the judge's direction and control to do so.

(5) A judge should require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(5) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(6) A judge should accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge should not initiate, nor consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte

communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided that the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, with a record being made, a d affords the parties reasonable opportunity to respond.

C. Disciplinary Responsibilities. A judge should report to the appropriate disciplinary authority any unprofessional conduct of a judge or lawyer of which the judge may become aware.

D. Disqualification. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, ...

APPENDIX Q

RULES FOR DISTRICT COURTS OF OKLAHOMA

Adopted Effective January 1, 1982, Including Amendments Received through November 1, 2004
O.S. Title 12, Chapter 2, Appendix 1

RULE 13. SUMMARY JUDGMENT OR SUMMARY DISPOSITION OF ISSUES

a. A party may move for either summary judgment or summary disposition of any issue on the merits on the ground that the evidentiary material filed with the motion or subsequently filed with leave of court show that there is no substantial controversy as to any material fact. The motion shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary judgment or summary disposition of any issues should be granted. Reference shall be made in the statement to the pages and paragraphs or lines of the evidentiary materials that are pertinent to the motion. Unless otherwise ordered by the court, a copy of the material relied on shall be attached to the statement.

The motion may be served at any time after the

filing of the action, except that, if the action has been set for trial, the motion shall be served at least twenty (20) days before the trial date unless an applicable scheduling order establishes an earlier deadline. The motion shall be served on all parties and filed with the court clerk.

b. Any party opposing summary judgment or summary disposition of issues shall file with the court clerk within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion; provided, however, that a responsive statement shall not be due from a party earlier than forty-five (45) days after service of the first summons by, or upon that party. Unless otherwise ordered by the court, the adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of another party. In the statement, the adverse party or parties shall set forth and number each specific material fact which is claimed to be in controversy and reference shall be made to the pages and paragraphs or lines of the evidentiary materials. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary judgment or summary disposition unless specifically controverted by the statement of the adverse party which is

supported by acceptable evidentiary material. If the motion for summary judgment or summary disposition is granted, the party or parties opposing the motion cannot on appeal rely on any fact or material that is not referred to or included in the statement in order to show that a substantial controversy exists.

c. The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissable at trial. The admissibility of other evidentiary material filed by either party shall be governed by the rules of evidence. If there is a dispute regarding the authenticity of a document or admissibility of any submitted evidentiary material, the court may rule on the admissibility of the challenged material before disposing of the motion for summary judgment or summary disposition. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material. Evidentiary material that does not appear to be convertible to admissible evidence at trial shall be challenged by objection or motion to strike, or the objection shall be deemed waived for the purpose of the decision on the motion for summary judgment or summary disposition. If a trial of the factual issues is required after proceedings on a motion for summary judgment or

summary disposition, evidentiary rulings in the context of the summary procedure shall be treated as rulings *in limine.*

d. Should it appear from an affidavit of a party opposing the motion that for reasons stated the party cannot present evidentiary material sufficient to support the opposition, the court may deny the motion for summary judgment or summary disposition without prejudice or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just. A motion filed pursuant to this paragraph shall not be deemed a consent to the exercise by the court of jurisdiction over the party, or a waiver of the right to file a motion to dismiss the action.

e. If it appears to the court that there is no substantial controversy as to the material facts and and that one of the parties is entitled to judgment as a matter of law, the court shall render judgment for said party.

If the court finds that there is no substantial controversy as to certain facts or issues, the court may enter an order specifying the facts or issues which are not in controversy and direct the action proceed for a determination of the remaining fact or issues. An order denying either summary judgment or summary disposition is interlocutory and is not reviewable on appeal prior to final judgment.

subject to accelerated appellate review under Rule 1.36 of the Oklahoma Supreme Court Rules. The record on appeal will be limited to:

(1) the memorialized entry of judgment; in multi-party or multi-claim cases the judgment or dismissal order must *either* (1) dispose of all claims and all parties or (2) entirely dispose of at least one claim or one party *and* contain the express determination that there is no just reason for delay with the express direction by the trial judge that judgment be filed. See 12 O.S. Section 994.

(2) pleadings proper as defined by 12 O.S. Section 2007(A);

(3) applicable instruments on file, including the motion and response with supporting briefs and materials filed by the parties as prescribed by subsections (a) and (b);

(4) any other item on file which, according to some recitation in the trial court's written journal entry or in some other order, was considered in its decision;

(5) any other order dismissing the claim or determining the issues as to some but not all parties or claims;

(6) any transcripts of the hearing on the motion;

(7) any motions, along with supporting and responsive briefs, for a new trial (re-examination) of summary judgment or appealable summary disposition process.

[Withdrawn and replaced effective November 1, 1984; amended June 29, 1993; amended effective September 16, 2002.]

OKLAHOMA SUPREME COURT RULES

Effective January 1, 1997
Including Amendments Received
Through November 1, 2004
O.S. Title 12, Chapter 15, Appendix.

Rule 1.36 ACCELERATED PROCEDURE FOR SUMMARY JUDGMENTS AND CERTAIN DISMISSALS

(a) Cases Applied. The Rule 1.36 accelerated procedure will govern appeals from:

1. summary judgments in cases in which the motions were filed under District Court Rule 13 after October 1, 1993; and

2. final orders in cases in which motions to dismiss for failure to state a claim or lack of jurisdiction (of a person or subject matter) under District Court Rule 4 were filed after October 1, 1993.

In multi-party or multi-claim cases the summary judgment or dismissal order must either (1) dispose of all claims and all parties or (2) entirely dispose of at least one claim or one party and contain the express determination that there is no just reason for delay with the express direction by the trial

judge that judgment be filed. See 12 O.S.Supp. 1995 Section 994.

(b) Commencement of Appeal. Appeals in these cases will be commenced by filing a petition in error with a certified copy of dismissal order or of summary judgment and, where applicable, a certified copy of the order denying new trial, with payment of costs or an affidavit *in forma pauperis.* The petition in error must comply with all Rules to the extent they are consistent with Rule 1.36. The record shall be filed at the same time as the petition in error. Rule 1.36(d).

(c) Record on Appeal. The record on appeal will stand limited to:

(A) In appeals from summary judgment:

(1) the memorialized order by which summary judgment was entered;

(2) pleadings proper as defined by 12 O.S.1991 Section 2007(A), (petition, answer, etc.);

(3) applicable instruments on file, including the motion and response with supporting briefs and attached materials filed by the parties as required by District Court Rules 13(a) and 13(b);

(4) any other item on file which, according to some recitation in the trial court's journal entry or in some other order, was considered in the decisional process;

(5) any other order dismissing some but not all parties or claims;

(6) any transcripts of proceedings on the motion(s);

(7) any motions, along with supporting and responsive briefs, for a new trial (re-examination) of the summary judgment process;

(8) the appearance docket; and

(9) a cover page and Index of the record prepared by the party.

(B) In appeals from final orders on motions to dismiss:

(1) the memorialized order of dismissal;

(2) pleadings proper as defined by 12 O.S. 1991 Section 2007(A), (petition, answer, etc.);

(3) the instruments upon which the dismissal is rested;

(4) the motion(s) to dismiss and any supporting brief(s);

(5) any responsive brief by the party asserting the claim;

(6) any other item on file which, according to some recitation in the trial court's dismissal order or in some other order, was considered in its decision;

(7) any other order dismissing some but not all parties or claims;

(8) any transcripts of proceedings on the motion;

(9) any motions, along with supporting and responsive briefs, for a new trial (re-examination) of the dismissal order;

(10) the appearance docket;

(11) a cover page and Index of the record prepared by the party.

(d) Record, Filing, Index, Copies, Transcripts, Costs, Supplement to Record, and Additional Copies on Certiorari. The record shall be filed by appellant as a separate document, not attached to petition in error. The record shall be titled "Record on Accelerated Appeal" and shall be preceded by a separate page containing signature of counsel (or pro se parties) and a certificate of service, followed by an "Index to Contents of Record." The index shall use numerical references which shall correspond to tabs for each of the documents or transcripts included in the record. The record shall consist of copies of instruments authorized by Rule 1.36(c), selected for inclusion by the appellant. To the front of the original and each of the copies of the record there shall be appended the court clerk's certificate identifying each of the included instruments as a true and correct copy of the original on file in the court clerk's office.

An original and four (4) copies of the record and certificate of the clerk shall be filed. One copy shall be served on every other party to the appeal unless waived, and any such waiver must be reflected on the certificate of service.

An appellant who is an inmate, as defined by the provisions of 57 O.S. Section 566 (B)(2), lawyerless and unable to produce the record required by this subsection, may attach to the petition in error an affidavit that discloses his (or her) prisoner status

and sets out a designation of record to be assembled for the appeal. When such affidavit is filed, the Supreme Court's clerk shall order from the trial court's clerk the original record which is to be compiled in accordance with the inmate's designation in the text of his (or her) affidavit. If the appealing inmate's pauper's affidavit is on file in this court, the record shall be prepared and transmitted to this court -- without payment of costs -- within thirty (30) days of the date the inmate's affidavit (with designation of record) is transmitted to the trial court by this court's clerk.

It shall be the appellant's duty to order transcripts from the court reporter and to pay costs to ensure timely completion of transcripts. If the transcripts are not filed with the petition in error because of delay in transcription, no more than one 30-day extension of time to complete transcripts will be granted by the court for good cause shown.

If the appellee desires to include documents or transcripts not included by the appellant in the record on appeal, the appellee shall order any such transcript and file a separate document titled "Supplement to Record on Accelerated Appeal," attaching any instruments or transcripts in the same form and manner as required for an appellant under Rule 1.36 herein. Any such supplement to the record shall be filed concurrently with the Response to the petition in error. The cost of transcribing

appellee-ordered portion of the record will be borne by the appellant unless: (1) The trial judge finds that the portion supports a counter or cross-appeal. or (2) The trial judge directs otherwise for good cause shown. In the latter event the appellee shall pay the transcription fee.

In the event that any party files a petition for writ of certiorari to review a Court of Civil Appeals decision under this accelerated procedure, the Supreme Court may issue an order requiring the party who filed such petition for writ of certiorari to submit to the Supreme Court Clerk additional copies of the Record on Accelerated Appeal and any Supplement to the Record on Accelerated Appeal.

(e) Response. Response(s) to the petition in error shall be filed within 20 days of the petition in error. If the appellee desires to include documents or transcripts not included by the appellant the appellee shall comply with Rule 1.36(d).

(f) Assignment of Appeal. After a response has been filed or the time for filing has expired, the appeal may be assigned to a division of the Court of Civil Appeals, unless initial screening is incomplete or there are unresolved jurisdictional, procedural or postural defects. Assignment to the Court of Civil Appeals shall be in a manner directed by the Chief Justice, with notice given to the parties.

(g) Appellate Review and Briefs. The appellate court shall confine its review to the record actually presented to the trial court. Unless otherwise

ordered by the appellate court, no briefs will be allowed on review. If briefs are ordered, the appellate court will prescribe a briefing schedule. Motions for leave to submit appellate briefs shall be deemed denied unless affirmatively granted by the court. No briefs shall be tendered by attachment to a motion for leave to brief, and the clerk shall not accept or file an appellate brief without prior leave of the court. A motion for appeal related attorney's fees must be made by motion prior to mandate. See Rule 1.14.

(h) Oral Argument. Appeals may be decided pursuant to this rule with or without argument. If argument is granted and the appellate court should orally announce its decision from the bench, it shall also, as in other cases, hand down a memorandum opinion or order.

(i) Certiorari. Certiorari to review any decision of the Court of Civil Appeals made pursuant to this rule may be sought in the same manner as in any other appeal. The time for filing a petition for certiorari is governed by Rules 1.178, 1.179.

(j) N/A

(k) N/A

(l) N/A

APPENDIX S

OKLAHOMA STATUTES INVOLVED

OKLAHOMA STATUTES ANNOTATED

O.S. Title 21 § 461. Larceny or Destruction of Records by Clerk or Officer

Any clerk, register or other officer having the custody of any record, maps or book, or of any paper or proceeding of any court of justice, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying or unlawfully removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding five (5) years, and in addition thereto, such person shall forfeit office.

R.I. 1910 § 2207; Laws 1997, c. 133, § 201, eff. July 1, 1999; Laws 1999, 1st Ex. Sess., c. 5, § 112, eff. July 1, 1999.

O.S. Title 21 § 463. Offering Forged or False Instruments for Record

Any person who knowingly procures or offers

any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, shall be guilty of a felony.

R.L. 1910, S 2209; Laws 1997, c. 133 S 203, eff. July 1, 1999.[1]

1

Notes of Decisions

1. In General: It is immaterial how instrument was forged or whether defendant forged it or not. The question is, did defendant present the forged instrument for record? Fowler v. State, Okla. Crim. App., 20 Okla. Crim 410, 203 P. 900 (1922).

2. Evidence: In prosecution under this section, proof of ways, means, and circumstances of uttering a false or forged instrument was sufficient, and not at variance with the allegations. Fowler v. State, Okla. Crim. App., 20 Okla. Crim. 410, 203 P. 900 (1922).

APPENDIX Y

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff, vs CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, an individual and Vice President of Continental Resources, Inc., And DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants	Case No. CJ-2002-151

* * * *

EXERPTS FROM TRANSCRIPT OF HEARING ON PLAINTIFF'S MOTION FOR RECUSAL OF JUDGE RONALD G. FRANKLIN 1/13/05

HELD ON JANUARY 13TH, 2005
BEFORE THE HONORABLE RAY DEAN
LINDER, PRESIDING JUDGE OF THE
FOURTH JUDICIAL DISTRICT

* * * *

REPORTED BY

Mark W. Fike, C.S.R.
Official Court Reporter
1600 Main Street, Suite 7
Woodward, Oklahoma 73801
(580) 256 - 3405

APPEARANCES

Mr. Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145
(918) 252 1987
Appearing Pro Se

* * * *

Mr. Glenn A. Devoll
Ms. Julia C. Rieman
- Of the Firm -
Gungoll, Jackson, Collins, Box & Devoll, P.C.
323 West Broadway Avenue
P.O. Box 1549
Enid, Oklahoma 73702 - 1549
(580) 234 0436
Attorneys for Defendant Continental Resources

CONTENTS

	Page
Appearances. . . .	2
PLAINTIFF'S MOTION FOR RECUSAL:	
Argument by Mr. Olson . .	4
Response by Mr. Devoll . .	46
Further argument by Mr. Olson .	48
COURT'S RULING . . .	49
Certificate of Court Reporter . .	53

* * * *

PROCEEDINGS

* * * *

Line [ ] Page ( )

[4] THE COURT: There are two matters that I think [5] will come on for consideration today : CJ-2002-151 and [6] CJ-2004-121. These are inter-related matters, it appears to [7] me. And there is for consideration at this time the motion [8] to disqualify the previously assigned and presiding judge in [9] this matter, to wit : Judge Franklin. That's the issue with [10] which we're going to deal.

[11] The plaintiff present and ready to proceed on that [12] basis.

[13] MR. OLSON: Yes, sir.

[14] THE COURT: Defendants present by

counsel and [15] ready as well ?
[16] MR. DEVOLL: Yes, sir.
[17] THE COURT: Mr. Olson, we've not met. It's my [18] understanding that you are Robert Olson. You are not an [19] attorney at law. You have chosen in the past, and choose [20] again today, to proceed pro se; is that correct ?
[21] MR. OLSON: That is correct, sir.
[22] THE COURT: You understand that this is a serious [23] matter. We're in the district court. we are making a formal [24] record. We're going to deal with not only district court [25] matters, we're going to deal with matters from the Court of

(4)

[1] Civil Appeals, we're going to deal with matters from the [2] Supreme Court of the State of Oklahoma. Is that correct ?
[3] MR. OLSON: Yes, sir.
[4] THE COURT: I see as well by some of your filings [5] that you have indicated you may seek relief in the Supreme [6] Court of the United States. You need to be aware of the fact [7] this is a court of law. The court expects everyone who [8] appears here to know the rules, to abide by the rules and to [9] proceed professionally. Understood ?
[10] MR. OLSON: Yes, sir.

[3] THE COURT: If the file shows that that's what [4] the order says, it would be correct, would it not ?

[5] MR OLSON: Yes.

[6] THE COURT: Have you looked at the file ?

[7] MR. OLSON: Uh --

[8] THE COURT: The court file contained here in the [9] Blaine County courthouse.

[10] MR. OLSON: No, sir.

[11] THE COURT: You've had access to it if you wanted [12] it, have you not, or have you --

[13] MR. OLSON: Yes.

[14] THE COURT: -- been denied access to it ?

[15] MR. OLSON: I haven't been denied access to it.

[16] THE COURT: All right, sir. It's available to [17] you at any time ?

[18] MR. OLSON: Yes.

[19] THE COURT: And if that file contains that order [20] signed by the chief justice, Justice Watt, that certiorari [21] was denied, that, too, would be correct, right ?

[22] MR. OLSON: Yes, sir.

[23] THE COURT: All right, sir. I don't need any [24] real background on the facts of the case. I need for you to [25] explain to me why Judge Franklin should be recused when the

[23] MR. OLSON: Then you said that I can make [24] whatever record I wish to make ?
[25] THE COURT: I'm going to allow that. And if I

(9)

[1] think that it strays so far from the norm or so far from the [2] accepted practice, there may or may not be an objection, or I [3] may sua sponte say, That's it. But yes, sir, I'm going to [4] give you as much rein as you think you need reasonably to [5] proceed here today. All right, sir ?
[6] MR. OLSON: Okay, sir. Then I would like to [7] present a summary of the case.
[8] THE COURT: Have you not done that in one of [9] these filings I've just been reading for the last hour or so ? [10] And also previously you had submitted to me by mail at least [11] three or four hundred pages of information. So I've read [12] what you've done in the past. Is this a new production by [13] you ?
[14] MR. OLSON: No, sir. It's one that's been [15] included.
[16] THE COURT: All right, sir. I'm going to tell [17] you that I'm cognizant of everything that's in this file.
[18] MR. OLSON: Okay. Then you are cognizant of the [19] case law history of --

what Garfield County has to do with this [22] particular case. We're in the District Court of Blaine [23] County, aren't we ?

[24] MR. OLSON: That's the reason I think the [25] district judge in Blaine County should have heard the case

(23)

[1] and not the district judge from Garfield County.

[2] THE COURT: Well, first of all, there isn't, [3] quote, a district judge of Blaine County unless you consider [4] Judge Franklin, because he is the chief judge of Blaine [5] County by my assignment. I happen to be the presiding [6] district judge in 18 counties, and I have assigned him as the [7] chief judge. There is not a physically resident district [8] judge in Blaine County. There is an associate district [9] judge.

[10] MR. OLSON: Okay.

[11] THE COURT: But the fact that Judge Franklin [12] resides, you say, in Garfield County, how does that have [13] significance in this case in Blaine County ?

[14] MR. OLSON: Because he came from Garfield County [15] where the defendant, Continental Resources, is located, and [16] came here to try the case, and I asked him to recuse, and he [17] said, no, he's keeping it.

[19] MR. OLSON: Six
[20] THE COURT: And how many case files, case [21] summaries, would you suppose you've looked at in the time [22] that you have been doing this pro se litigating ?
[23] MR. OLSON: Case summaries --
[24] THE COURT: No. Case files, files that would [25] contain such instruments as what you've just referred to that

(29)

[1] -- the claim for attorney's fees with the accompanying data [2] given under oath by the submitting attorney. How many of [3] those have you seen ?
[4] MR. OLSON: Probably four.
[5] THE COURT: Mm-hmm. Would it surprise you that [6] I've been seeing things like that for over 35 years ?
[7] MR. OLSON: No, sir.
[8] THE COURT: That I have seen thousands -- [9] thousands -- of similar summaries, and would it surprise you [10] that you're the first person that I'm aware of that has ever [11] raised that as an improper communication by and between the [12] attorneys and the judge ? It's done as -- it's commonplace. [13] It' done in almost every case in which there is a contested

[14] issue as to the amount of attorney's fees that are due and [15] owing. Would that surprise you at all ?

[16] MR. OLSON: We're not talking about the amount of [17] attorney's fees. We're talking about the amount of [18] communication, your Honor.

[19] THE COURT: Yes, sir. And as I see your [20] pleadings, you object more than anything else to the fact [21] that a summary or an index, an index with case citations, was [22] furnished and that a proposed order was furnished. Aren't [23] those two of your main objections ? That's the communication [24] that really has gotten under your saddle ?

[25] MR. OLSON: Yes, your Honor.

(30)

[1] THE COURT: Were you not requested to provide a [2] proposed finding of fact and conclusions of law yourself at [3] the end of the summary judgment ?

[4] MR. OLSON: Yes. And we each provided that and [5] each provided it to the other party.

[6] THE COURT: But the fact that they did so to the [7] judge is a violation of some sort of professional rules ? Is [8] that what you are telling me ?

[9] MR. OLSON: Your Honor.
[10] THE COURT: Why, if you provided such a proposed [11] order, are you not in violation of the same restriction ?
[12] MR. OLSON: You're -- you're mixing concepts, [13] your Honor.
[14] THE COURT: Oh. Oh. So a proposed order from [15] the plaintiff is different than a proposed --
[16] MR. OLSON: No.
[17] THE COURT" -- order --
[18] MR. OLSON: No.
[19] THE COURT: -- from the defendants ?
[20] MR. OLSON: No, your Honor. We were each ordered [21] to provide our potential order and find- -- or finding of [22] facts.
[23] THE COURT: Right.
[24] MR. OLSON: We each did that, and each provided [25] it to the other party. Then they provided an additional

(31)

[1] notebook to the judge that was highlighted with their cases.
[2] THE COURT: And you were denied the opportunity [3] to do that ?
[4] MR. OLSON: Yes, sir.
[5] THE COURT: You were -- he told you,

don't bring [6] me a notebook ?
[7] MR. OLSON: No, he didn't say that.
[8] THE COURT: Don't bring me a highlighted [9] instrument ? You know, you've sent me three or four hundred [10] pages of highlighted materials.
[11] MR. OLSON: And I sent that to everybody. I [12] didn't send it just to you.
[13] THE COURT: So how is it so egregious that they [14] provided the citations of cases actually presented in open [15] court on the record and they provided an index of those same [16] cases presented in open court on the record ?
[17] MR. OLSON: Highlighted with the words they used [18] in their briefs.
[19] THE COURT: Did they "X" out or did they in any [20] way exclude materials that would have been beneficial to you ? [21] Do you know ? Did they do that ?
[22] MR. OLSON: I don't know if they did or not, your [23] Honor. There was only one copy of that made, and it was [24] given to Judge Franklin and he threw it away.
[25] THE COURT: So what import did it have ?

(32)

[1] MR. OLSON: He threw it away after the case, your [2] Honor, not before.
[3] THE COURT: Have you read Ms. Rieman's

affidavit [4] about how she prepared that and what she did with it ?

[5] MR. OLSON: Yes, I have, your Honor. And it -- [6] and it bothered me. Why would an attorney spend two and a [7] half hours making that notebook if they didn't expect to get [8] a return on that time investment ?

[9] THE COURT: Do you suppose it has anything to do [10] with her being a conscientious representative/advocate for [11] her client ? Do you suppose it has anything to do with that; [12] that she thought that was part of the job she was supposed to [13] do to represent her client ?

[14] MR. OLSON: If it was the job she was supposed to [15] do, your Honor, she should have provided that to everybody, [16] not just the one copy to the judge.

[17] THE COURT: Was that kept secret from you, the [18] fact that he had that notebook ? Did he --

[19] MR. OLSON: It was not revealed to me. It was [20] not revealed to me, and it was not revealed that I had an [21] opportunity to also send him a notebook with my case files [22] highlighted to support my arguments.

[23] THE COURT: And in the six cases in which you've [24] been directly involved, have

you ever seen such an instrument [25] before any attorney, an aid to the court such as that ?

(33)

[1] Have you ever seen one of those before ?

[2] MR. OLSON: No.

[3] THE COURT: If I told you I've seen a thousand of [4] them, do you think I would be exaggerating ?

[5] MR. OLSON: I have no idea.

[6] THE COURT: Mm-hmm.

[7] MR. OLSON: But I think you should question those [8] things when they are provided. Those are --

[9] THE COURT: Maybe if you took a course in trial [10] practice you'd find out about things like that, Mr. Olson, [11] and know that it is commonplace and appreciated usually by [12] judges. Not always. Sometimes they're -- they may be [13] extraneous.

[14] MR. OLSON: Does that persuade the judge or make [15] the judge somewhat more --

[16] THE COURT: Absolutely not. It just makes it a [17] little easier to collect your thoughts when you get ready to [18] draft your order.

[19] MR. OLSON: Then why does the judge not ask [20] people to do that ?

[21] THE COURT: Sometimes judges do ask

Sometimes [22] it's done just as common practice within certain districts; [23] It's just an understood thing that it will happen. No [24] preclusion. Maybe a person needs to do a little [25] investigation about the history of various judicial districts

(34)

[1] before he or she attempts to practice in those various [2] districts.

[3] Can we get on with the issue of disqualification of [4] Judge Franklin ?

[5] MR. OLSON: Well, your Honor, there is no doubt [6] that they have talked to the judge. there is no doubt --

[7] THE COURT: Who is "they" ?

[8] MR. OLSON: The opposing attorneys have talked to [9] the judge.

[10] THE COURT: And who are those attorneys, for the [11] record. The record doesn't have eyes; it can't see as you [12] wave your hand.

[13] MR. OLSON: Julia Rieman and Glenn Devoll.

[14] THR COURT: Okay. And they talked with the judge [15] outside your presence ?

[16] MR. OLSON: Yes, sir.

[17] THE COURT: And they talked about the merits of [18] the case ?

[17] THE COURT: -- told you how much time they'd [18] spent on each of these issues; is that right ?

[19] MR. OLSON: That's correct, sir.

[20] THE COURT: And then you made your own [21] interpretation. And if there was -- you said 1.75. If there [22] was 1.75 hours, you don't know how that time was divided, do you ?

[24] MR. OLSON: No, sir.

[25] THE COURT: Okay. All right, sir. Go ahead.

(37)

[1] MR. OLSON: Well, this notebook -- spent two and [2] a half hours preparing this notebook -- was provided to Judge [3] Franklin on July the 11th. The hearing was on July 17th. [14] Now, when we came to the hearing, Mr. Devoll -- I met him [5] out front before. He gave me a nice smile and asked me if I [6] spent a lot of time preparing for this -- for the hearing. [7] When we got in there, there was no oral argument on the [8] hearing, and Mr. Devoll just put a pile of stuff on the desk [9] and didn't prepare for any argument whatsoever. That smile [10] told me he knew what the verdict was going to be already.

[11] THE COURT: Now, you're a geologist, not a psychologist or a psychiatrist, are you Mr.

[22] I think that the affidavit of Ms. Rieman -- and that's [23] why she's here, should the Court have any questions -- speaks [24] for itself in relation to the notebook. We do that as a [25] matter of course -- the judge knows that; the Court knows

(47)

[1] that -- as an aid to the court and a courtesy to the court.

[2] We have been fighting these motions in these two cases [3] for some time. Mr. Olson has lost the case, seems not to be [4] able to accept that result, and has struck out, in my view, [5] unjustifiably against an officer of the court, Judge [6] Franklin, in a very false and malicious way. And for that [7] aspect of his actions, I regret that, but I understand his [8] animosity towards us as opposing counsel.

[9] I'll hold any other comments that I may have but would [10] like to make, and ask that the Court leave Judge Franklin as [11] the judge on this case, and that his orders continue in [12] effect that he's already made in this matter which partially [13] relate to Mr. Olson bringing any other actions or filing any [14] other pleadings in these cases so we can finally get rid of [15] this case and move on. He continues to cost not just

still [12] shows that there is continuing communication with Judge [13] Franklin. The fact that only one copy of that notebook was [14] made, that it was highlighted with -- for their cases, their [15] arguments, is significant.

[16] My brother has a friend who's a retired Texas Supreme [17] Court Justice --

[18] THE COURT: Admitted to practice in Oklahoma ?

[19] MR. OLSON: I have no idea.

[20] THE COURT: Knows anything about the facts of [21] this case ?

[22] MR. OLSON: No, sir.

[23] THE COURT: All right, sir. What relevance does [24] it have ?

[25] MR. OLSON: His opinion is that the attorneys and

(49)

[1] the judge have been talking.

[2] THE COURT: Maybe he should be directly involved [3] in the case; then his opinion would be worth something.

[4] MR. OLSON: Yes, sir. Property has been stolen [5] from me worth about $ 900,000. I think it was stolen from me [6] because I'm acting pro se and they thought they could do it. [7] They owe me a fiduciary duty, they owe me a

contractual duty [8] that was not fulfilled, and I intend to explore every avenue [9] I possibly can to recover my property.

[10] I appreciate the indulgence of the Court. Thank you [11] sir.

[12] THE COURT: All right, sir. The fiduciary duty [13] issue, that was raised by you in your presentation either to [14] the Court of Civil Appeals or to the Supreme Court, was it [15] not ?

[16] MR. OLSON: Yes, sir.

[17] THE COURT: All right, sir. Very good.

[18] I hope, Mr. Olson, and I hope, Mr. Devoll and Ms. [19] Rieman, that you don't think the Court has taken an hour just [20] to spend the time. There can be no more serious charge than [21] that fraud was committed on or by the court, or that fraud [22] was committed by officers of this court, or that anyone was [23] fraudulently deprived of property and then denied access to [24] full, equal and complete justice.

[25] Mr. Olson, your presentation was remarkable for a

(50)

[1] person who doesn't regularly appear in open court. You said [2] you've been involved in six cases. And I know you must have [3] spent a considerable time in pursuing your education. I

[4] noticed that you have the initials Ph.D. after your name and [5] that you are a practicing geologist.

[6] The three years that it takes to complete law school [7] are long and arduous and very productive years. The practice [8] of law for 10 or 15 years by one of these attorneys and for [9] 20 or 25 more years by the other attorney have equal [10] importance, because they understand not only the letter of [11] the law but the niceties of the law and the requirements of [12] the Code of Judicial Conduct and the Rules of Professional [13] Conduct.

[14] Every lawyer that appears in any court is an officer [15] of the court before whom he or she appears. Ms. Rieman has [16] provided a substantial affidavit outlining what she did [17] insofar as this notebook was concerned. And I have told you [18] -- and I don't mean to exaggerate; I might not have seen a [19] thousand such notebooks, but I know that I have seen several [20] hundred of such notebooks because it's very, very [21] commonplace.

[22] I've been a judge for 37 years. I've tried cases in [23] over 30 counties in the state of Oklahoma. The method of [24] practice is very, very important. The rules of practice is [25] very

very important. It's important, too, that people not

(51)

[1] find fault simply because they're upset with the results. To [2] accuse a judicial officer, to accuse a practicing attorney, [3] of perpetrating fraud simply because they're upset about the [4] results and have lost a significant amount of income-producing [5] property, while generally accepted by the populous, cannot and [6] will not be accepted by this, and I think other, courts.

[7] If you're going to cast stones about a person's [8] professional integrity, you need to have rock-hard proof. [9] There is some protection, as I said at the outset, when you [10] appear in court. You can make certain allegations in open [11] court that you can't make anyplace else, but they need to be [12] well-founded.

[13] I have listened carefully. I have, I think, done my [14] homework in this case in that I have read probably a couple of [15] thousand pages of materials. I have looked at the court [16] rules. I've applied those rules to this case. You lost in [17] the trial court; the Court of Civil Appeals, with Judge [18] Hansen, one of the most respected judges in Oklahoma in the [19] last 50 years, who wrote the opinion. You've found fault with [20] the ruling made by the Supreme Court of the State

if your schedule [16] would permit you to appear at a hearing on assets within 10 [17] days. That can't even be a veiled threat, in my opinion.

[18] Judge Franklin remains in the case, and that becomes [19] the order of this court.

[20] Thank you, ladies and gentlemen. That will conclude [21] this hearing.

[22] MR. DEVOLL: Thank you, your Honor

[23] (End of Proceedings)

* * * * *

Certified by :

s/ Mark Fike

Certified Shorthand Reporter

APPENDIX Z

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV. JURISDICTION AND VENUE
CHAPTER 81. SUPREME COURT

28 USCS SECTION 1257

SECTION 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

APPENDIX AA

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff, vs. CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., DAVIS OPERATING COMPANY, an Oklahoma corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants.	BLAINE COUNTY OKLAHOMA FILED JUN 16 2005 REBEKAH MARTIN CT CLERK BY Christy Matli DEPUTY cgd Case No. CJ-2002-151

ORDER OVERRULING MOTION TO VACATE AND PETITION FOR NEW TRIAL

Now on this 31st day of March 2005, the Court having received the mandate from the Supreme Court in Case No. 99704 wherein the Court of Civil Appeals affirmed this Court's

Summary Judgment entered August 11, 2003 and being cognizant of the ruling of the Supreme Court in case No. 101682 wherein that Court assumed original jurisdiction and denied the Plaintiff, Robert Olson's request for issuance of a writ of mandamus to this Court, the Court **FINDS;**

That the Plaintiff's request for issuance of a writ of mandamus to this Court in Case No. 101682 was based on the same facts and evidence raised by the Plaintiff in his Motion to Vacate the Trial Court's Order In District Court Case CJ-02-151 Due to the Appearance of Judicial Prejudice (the Motion), filed in this case on October 22, 2004 and his Petition for a New Trial in (1) District Court Case CJ-2004-121 (sic; filed in Case CJ-20020151) Due to the Appearance of Judicial prejudice (the "Petition), filed in this case on October 26, 2004;

That the issues raised by the Plaintiff in the Motion and Petition are moot as a result of the rulings of the Court of Civil Appeals and the Supreme Court in Case No. 99704 and Case No. 101682.

IT IS THEREFORE, ADJUDGED AND DECREED that the Plaintiff's Motion to Vacate the Trial Court's Order In District Court Case CJ-02-151 Due to the Appearance of Judicial Prejudice, filed in this case on October 22, 2004 and his

Petition for New Trial in District Court Case CJ-2004-121 {strikethrough is initialed by RBS, RWO and JR} (sic; filed in Case No. CJ-2002-151) Due to the Appearance of Judicial Prejudice, filed in this case on October 26, 2004 are hereby **OVERRULED.**

The Court takes notice of the Plaintiff's objection to this ruling.

SO ORDERED this 16th day of June 2005.

s\ R

The Honorable, Ronald G. Franklin,
District Judge

APPROVED AS TO FORM:

s\ Julia C. Rieman
Glenn A. Devoll, OBA #2327
Julia C. Rieman, OBA #15337
Gungoll, Jackson, Collins, Box & Devoll, P.C.
P.O. Box 1549
323 West Broadway
Enid Oklahoma 73702 - 1549
(580) 234-0436 - Telephone
(580) 233-1284 - Facsimile

Attorneys for Defendants
Continental Resources, Inc.
Harold Hamm and Tom Luttrell

(2)

s\ Adam Marshall
Robert B. Sartin, OBA #12848
Adam Marshall, OBA #19871
610 South Main, Suite 300
Tulsa, Oklahoma 74119 - 1600

Attorneys for Defendants
Davis Operating Company and
William H. Davis

s\ Robert Olson
Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145

Plaintiff (Pro Se)

(3)

APPENDIX CC

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON,
Plaintiff / Appellant
vs.
CONTINENTAL RESOURCES, INC., An Oklahoma Corporation, HAROLD HAMM, An Individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, An Individual and Vice President of Continental Resources, Inc.
AND
DAVIS OPERATING COMPANY) An Oklahoma Corporation, WILLIAM H. DAVIS, An Individual and President of Davis Operating Company,
Defendants / Appellees.

PROPOSED
(PROPOSED) Noted by Appellant to avoid confusion

CJ-2004-121
District Court Case Number

ORDER GRANTING SUMMARY JUDGMENT

NOW on this 11th day of August, 2005, there comes on for consideration in the above referenced case the Defendants, Continental resources, Inc.,

Harold Hamm and Tom Luttrell's Motion for Summary Judgment. Plaintiff, Robert Olson appears *pro se*, Defendants, Continental Resources, Inc., Harold Hamm and Tom Luttrell, appear by and through their counsel of record, Julia C. Rieman of Gungoll, Jackson, Collins, Box & Devoll, P.C., and Defendants, Davis Operating Company and William H. Davis appear by and through their counsel of record, Robert B. Sartin. The Court, having heard arguments from counsel for the Defendants, Continental Resources, Inc., Harold Hamm and Tom Luttrell, and from the Plaintiff, and having reviewed the briefs filed by the parties, finds that the Motion should be granted.

SUMMARY JUDGMENT IS THEREFORE ENTERED, on the basis of claim preclusion, in favor of the Defendants, Continental Resources, Harold Hamm and Tom Luttrell on all of the Plaintiff's claims against them herein; the Plaintiff's exception is allowed.

THE HONORABLE RONALD G. FRANKLIN
JUDGE OF THE DISTRICT COURT

CC 2

JCR/gs

APPROVED AS TO FORM:

s\b Julia C. Rieman

Glenn A. Devoll, OBA #2327
Julia C. Rieman, OBA #15337
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.
P.O. Box 1549
323 West Broadway
Enid, Oklahoma 73702 - 1549
(580) 234-0436 - telephone
(580) 233 - 1284 - facsimile

Attorneys for Defendants
Continental Resources, Inc.
Harold Hamm and Tom Luttrell

CC 3

ORDER GRANTING SUMMARY JUDGMENT CJ-2004-121

APPROVED AS TO FORM:

_____

Robert B. Sartin, OBA #12848
Adam Marshall, OBA #19871
610 South Main, Suite 300
Tulsa, Oklahoma 74119-1600

Attorneys for Defendants
Davis Operating Company and
William H. Davis

APPROVED AS TO FORM:

_____

Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145

Plaintiff (Pro Se)

CC 4

ORDER GRANTING SUMMARY JUDGMENT CJ-2004-121

APPROVED AS TO FORM:

s\b Robert B. Sartin

Robert B. Sartin, OBA #12848
Adam Marshall, OBA #19871
610 South Main, Suite 300
Tulsa, Oklahoma 74119-1600

Attorneys for Defendants
Davis Operating Company and
William H. Davis

Exhibit B

CC 5

APPENDIX **DD**

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff / Appellant	) BLAINE
vs.	) COUNTY,
CONTINENTAL RESOURCES, INC., An Oklahoma Corporation,	) OKLAHOMA
HAROLD HAMM, An Individual and President and Chief Executive Officer of Continental Resources, Inc.,	) FILED
TOM LUTTRELL, An Individual and Vice President of Continental Resources, Inc.	) OCT -7 2005
AND	) S\B REBEKAH
DAVIS OPERATING COMPANY) An Oklahoma Corporation,	) MARTIN
WILLIAM H. DAVIS, An Individual and President of Davis Operating Company, Defendants / Appellees.	) CGD
	) BY REBEKAH
	) MARTIN
	) CT. CLERK
	)
	)
	) CJ-2004-121
	) District Court
	) Case Number
	)
	)

ORDER GRANTING SUMMARY JUDGMENT

NOWon this 11th day of August, 2005, there comes on for consideration in the above referenced case the Defendants, Continental resources, Inc.,

Harold Hamm and Tom Luttrell's Motion for Summary Judgment. Plaintiff, Robert Olson appears *pro se,* Defendants, Continental Resources, Inc., Harold Hamm and Tom Luttrell, appear by and through their counsel of record, Julia C. Rieman of Gungoll, Jackson, Collins, Box & Devoll, P.C., and Defendants, Davis Operating Company and William H. Davis appear by and through their counsel of record, Robert B. Sartin. The Court, having heard arguments from counsel for the Defendants, Continental Resources, Inc., Harold Hamm and Tom Luttrell, and from the Plaintiff, the Court noting that the Plaintiff wanted to be heard additionally but the Court determined that Plaintiff had been provided sufficient time for argument and additional argument would be repetitive from previous hearings and appearances, and the Court having reviewed the briefs filed by the parties, finds that the Motion should be granted.

SUMMARY JUDGMENT IS THEREFORE ENTERED, on the basis of claim preclusion, in favor of the Defendants, Continental Resources, Harold Hamm and Tom Luttrell on all of the Plaintiff's claims against them herein; the Plaintiff's exception is allowed.

s\b Ray Dean Linder

s\b Ray Dean Linder

THE HONORABLE RAY DEAN LINDER
FOR THE HONORABLE RONALD G. FRANKLIN
JUDGE OF THE DISTRICT COURT

JCR/gs

APPROVED AS TO FORM:

s\b Glenn A. Devoll

Glenn A. Devoll, OBA #2327
Julia C. Rieman, OBA #15337
GUNGOLL, JACKSON, COLLINS, BOX &
DEVOLL, P.C.
P.O. Box 1549
323 West Broadway
Enid, Oklahoma 73702 - 1549
(580) 234-0436 - telephone
(580) 233 - 1284 - facsimile

Attorneys for Defendants
Continental Resources, Inc.
Harold Hamm and Tom Luttrell

APPROVED AS TO FORM:

s/b Robert B. Sartin

Robert B. Sartin, OBA #12848
Adam Marshall, OBA #19871
610 South Main, Suite 300
Tulsa, Oklahoma 74119-1600

Attorneys for Defendants
Davis Operating Company and
William H. Davis

Exhibit A4-3

APPROVED AS TO FORM:

s\b Robert Olson

Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145

Plaintiff (Pro Se)

State of Oklahoma
Blaine County ___ss____
IN THE DISTRICT COURT I, REBEKAH MARTIN, Dist. Court Clerk of Blaine Court, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the above named Court of the Court Clerk's Office at Blaine County, Okla. this 7 day of October 2005
(SEAL) REBEKAH MARTIN, COURT CLERK
By s\b Rebekah Martin
Deputy Court Clerk

APPENDIX EE

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER OF THE COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS
OF THE STATE OF OKLAHOMA
DIVISION I

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
APR 13 2007
MICHAEL S. RICHIE
CLERK

Case Number
102,933

ROBERT OLSON,
Plaintiff,Appellant,

vs.

CONTINENTAL RESOURCES, INC., an Oklahoma Corporation; HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an Individual and Vice President of Continental Resources, Inc.; DAVIS OPERATING COMPANY, an Oklahoma Corporation; and WILLIAM H. DAVIS, an Individual and President of Davis Operating Company,
Defendants/Appellees,

APPEAL FROM THE DISTRICT COURT OF
BLAINE COUNTY, OKLAHOMA

HONORABLE RAY DEAN LINDER, JUDGE

AFFIRMED

Robert Olson, *Pro Se* Plaintiff / Appellant,
(1)

Glenn A. Devoll,
Julia C. Rieman,
GUNGOLL, JACKSON, COLLINS, BOX &
DEVOLL, P.C.,
Enid, Oklahoma,
For Defendants / Appellees, Continental
Resources, Inc., Harold Hamm and
Tom Luttrell,

Robert B. Sartin,
Adam K. Marshall,
BARROW & GRIMM, P.C.
Tulsa, Oklahoma,
For Defendants / Appellees, Davis Operating
Company and William H. Davis.

OPINION BY ROBERT DICK BELL, JUDGE:

1. Robert Olson, Plaintiff / Appellant, appeals from the trial court's order denying his petition to vacate a prior judgment on the ground of fraud. For the reasons set forth below, we affirm the order of the trial court.

2. In Blaine County District Court Case No. CJ-2002-151, Plaintiff sued Defendants / Appellees to quiet title to an overriding royalty interest in an oil and gas lease and to recover damages for "sham legal process" and "civil conspiracy". The trial court granted summary judgment to Defendants, and granted Davis Operating Company summary judgment on its counterclaim for overpayment of royalty payments. The judgment was affirmed by this Court in *Olson v. Continental Resources, Inc.*, 2005 OK CIV APP 13, 109 P.3d 351. The Oklahoma Supreme Court denied Plaintiff's petition for certiorari.

3. Plaintiff then sued the same defendants - asserting the same claims based on (2) the same facts - in Blaine County District Court Case No. CJ-2004-121. The trial court granted summary judgment to Defendants on the ground of claim preclusion. Plaintiff's appeal of that decision is pending in Supreme Court Case No. 102,398.

4. In October, 2004, Plaintiff filed a motion to vacate the judgment in Case No. CJ-2002-151 and a petition for a new trial in Case CJ-2004-121.

Plaintiff also sought recusal of Judge Ronald G. Franklin, the original trial judge. Plaintiff's pleadings were based on alleged inappropriate *ex parte* communications between opposing counsel and Judge Franklin, about which Plaintiff knew during the original trial proceedings. Judge Franklin declined to recuse himself. The Honorable Ray Dean Linder, presiding judge of the judicial administrative district, denied Plaintiff's recusal motion, finding (1) The telephone conversations between opposing counsel and the trial judge related to the scheduling of motions and hearings, and Plaintiff presented no evidence of any improper communications; and (2) the notebook prepared by opposing counsel and submitted as an aid to the court was not inappropriately given, as it merely contained copies of cases cited in the parties' summary judgment briefs. Judge Linder noted it is common practice for attorneys to supply trial judges with copies of opinions relied upon by litigants.

5. Plaintiff then sought extraordinary relief from the Oklahoma Supreme Court, which assumed original jurisdiction and denied Plaintiff's petition to have Judge (3) Franklin removed from the case. *Olson v. Franklin*, Case No. 101682 (Okla. Feb. 28, 2005) (unpublished), *reh'g denied.* Plaintiff's similiar petition for a writ of mandamus to the United States Supreme Court was also denied. *In re Olson,___ U.S.___* , 126 S.Ct. 1793, 164 L.Ed.2d

559, *reh'g denied*___ U.S.___ , 126 S.Ct. 2962, 165 L.Ed.2d 979 (2006).

6. By order dated June 16, 2005, the trial court denied Plaintiff's motion to vacate the judgment in case No. CJ-2002-151 and petition for a new trial in Case No. CJ-2004-121. The trial court noted Plaintiff's request for a writ of mandamus from the Oklahoma Supreme Court was based on the same facts and evidence asserted by Plaintiff in his motion to vacate and petition for a new trial. As a result of the Supreme Court's denial of mandamus relief and this Court's opinion in *Olson*, 2005 OK CIV App 13, 109 P.3d 351, the trial court held the issues raised by Plaintiff's motion and petition were moot.[1]

7. On August 11, 2005, Plaintiff filed the instant petition to vacate the judgment in Case CJ-2002-151, asserting the same argument he made in his earlier motion to vacate, his petition for a new trial in Case No. CJ-2004-121 and his

---

[1] The Supreme Court recently declared that the summary denial of a writ of mandamus, even after the Court has assumed jurisdiction, has no preclusive effect. *Miller Dollarhide, P.C., v. Tal*, 2006 OK 27, Pgrf 13, _____ P.3d ____. The doctrines of res judicata and law of the case do not apply to an appellate order summarily denying a writ of mandamus. *Id.* at Pgrf 15.

mandamus actions. (Plaintiff also made the same allegations in a "Motion to Vacate" filed one week later in the same court). Specificly, Plaintiff contended the notebook given to Judge Franklin by opposing counsel was a "substantive, clandestine ex parte communication" that amounted to a fraud being perpetrated upon him. The trial court denied the petition / motion, holding, *inter alia:*

> The Court finds that plaintiff failed to timely urge his prayer for relief on the grounds of fraud and further that a complete review of the file fails to show the existence of any fraud in the obtaining of the judgment rendered by Judge Franklin.[2]

From said judgment, Plaintiff appeals.

8. We hold the trial court's judgment may be affirmed on either of two independent grounds: Issue preclusion and / or failure to prove fraud under 12 O.S. 2001 § 1031 (4). Under the doctrine of issue preclusion, known at common law as

---

[2] Judge Franklin recused himself from the instant case after being sued by Plaintiff in Tulsa County District Court Case No. CJ-2005-4925. That lawsuit was dismissed on October 5, 2005, for improper venue and failure to state a claim upon which relief could be granted.

collateral estoppel.

> [O]nce a court has decided an issue of fact or law necessary to its judgment, the same parties or their privies may not relitigate that issue in a suit brought upon a different claim. Issue preclusion prevents relitigation of facts and issues *actually litigated and necessarily determined* in an earlier proceeding between the same parties or their privies. An (5) issue is actually litigated and necessarily determined if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined.

State ex rel. Okla. Bar Ass'n v. Giger, 2004 OK 43, Pgrf 13, 93 p.3d 32, 38 (emphasis in original, footnotes omitted).

9. In his initial motion to vacate the judgment in Case No. CJ-2002-151, his petition for a new trial in Case No. CJ-2004-121, and his related recusal motion, Plaintiff alleged the same fraud, based upon the same facts and against the same defendants, as that alleged in the instant proceeding. That issue was submitted for the trial court's determination in the first vacation / new trial / recusal action and was in fact disposed of by

the trial court's holding that Plaintiff failed to present any evidence of improper communication between opposing counsel and the trial judge. Under the doctrine of issue preclusion, Plaintiff is estopped from relitigating in this case the same issue that was finally adjudicated in the prior proceeding.

10. Second, Section 1031 (4) authorizes a trial court to vacate its judgments "for fraud, practiced by the successful party, in obtaining a judgment or order". "The standard of review of a trial court's ruling either vacating or refusing to vacate a judgment is abuse of discretion." *Ferguson Enter., Inc. v. H. Webb Enter., Inc.*, 2000 OK 78, Pgrf 5, 13 P.3d 480, 482. In a proceeding under S 1031 to vacate a judgment on the ground of fraud, the petitioner must, *inter alia*, "provide clear and convincing (6) evidence of fraud,....." *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, Pgrf 38, 987 P.2d 1185, 1200.

11. In the present case, Plaintiff has utterly failed to provide any, much less clear and convincing, evidence of fraud. The only evidence upon which Plaintiff relies is that counsel for Continental presented a notebook of authorities to the trial judge. We are cognizant of the fact opposing counsel neglected to provide Plaintiff with a copy of the notebook. However, Plaintiff makes no allegation that the notebook contained anything other than

copies of opinions, with some highlighted text, indexed to the summary judgment briefs. Such action does not constitute fraud. Plaintiff has failed to present any evidence of improper communications between opposing counsel and Judge Franklin. The trial court did not abuse its discretion in refusing to vacate the original judgment.

12. In one of Defendants' answer briefs, this Court is asked to exercise its inherent power to enjoin Plaintiff from pursuing further vexatious litigation arising out of the original subject matter and / or based on any of the facts arising in the course of the various lawsuits that have preceded this appeal. Such an injunction request should be directed to the district court, a "first-instance tribunal with 'unlimited original jurisdiction of all justiciable matters .....' " Jeenigan v. Jernigan, 2006 OK 22, Pgrf 16, 138 p.3d 539, 545, quoting OKLA. CONST. Art. 7 S 7(a) (footnote & emphasis (7) omitted). See also 20 O.S. 2001 S 30.1 and Rule 1.17 (I) of the *Oklahoma Supreme Court Rules,* 12 O.S. 2001, Ch 15, App. 1 regarding jurisdiction of this Court.

13. On the basis of the foregoing, the judgment of the trial court is affirmed.[3]

---

[3] This Court has previously denied Plaintiff's

14. AFFIRMED.

HANSEN, P.J., and BUETTNER, J., concur.

---

motion to disqualify Judge Carol M. Hansen, who authored the unanimous opinion in *Olson v. Continental Resources, Inc.*, 2005 OK CIV APP 13, 109 P.3d 351, *supra* at Pgrf 2, from participating in this proceeding. Appellant's Motion for Rehearing or Reconsideration of the Motion for the Disqualification of Court of Civil Appeals Judge, Carol M. Hansen, is hereby denied.

APPENDIX FF

OKLAHOMA CIVIL PROCEDURE

FORMS AND PRACTICE, SECOND EDITION
Volume 2.
Clyde A. Muchmore
Harvey D. Ellis, Jr.
LexisNexis
(Rel. 8-2/2007 Pub.82216)
Mathew Bender & Company, 2007

Section 1005 Summary Judgment

Exerpt: Pages 10-46, 10-47

Introduction

Both state and federal practice enable any party to move for summary judgment. In state practice in Oklahoma, summary judgment procedure is governed by Dist. Ct. Rule 13, the purpose of which "is to relieve the courts of useless trials on issues that cannot be supported factually." Fraser, *Summary Judgment Where Facts Are Not Controverted,* 51 O.B.J. 1611 (1980). Federal procedure is governed by Fed. R. Civ. P. 56 and the local court rules for the three districts in Oklahoma. Under either state or federal practice a party may utilize summary judgment procedure to obtain a summary determination of fewer than all issues in the case. Indeed, Dist. Ct. Rule 13 was amended in

2002 to explicitly authorize a motion seeking "summary disposition of any issue on the merits ..." (which was also previously authorized by case law discussed below). Dist. Ct. Rule 13(a). Fed. R. Civ. P. 6(a) and (b) similarly allow the moving party to seek summary judgment as to fewer than all facts in controversy. A summary judgment motion in state court now requires the payment of a special filing fee; however, federal courts do not require any special filing fee. *See "Filing Fee for Summary Judgment," infra.*

Summary judgment is appropriate where it appears that there is no substantial controversy as to any material fact on the claims addressed by the motion, and that one party is entitled to judgment as a matter of law. *Flanders v. Crane,* 1984 OK 88; Pgrf 10, 693 P.2d 602, 605. Plaintiffs, in order to show entitlement to summary judgment, must demonstrate that there is no substantial controversy as to all facts that are material to their case and that all inferences which may be drawn from the undisputed facts are in their favor. Defendant may move for summary judgment either on the basis of affirmative defenses, or because plaintiff cannot prove one of the facts essential to recovery. in the latter case, defendant can prevail on showing that there is no substantial controversy as to one fact that is material to plaintiff's case, based on the undisputed facts and all inferences

which may be drawn from them. However, when an affirmative defense is the basis of the motion, defendants must show that there is no substantial controversy as to all of the facts that are material to the affirmative defense, and that the facts and references which may be drawn from them favor the defendant. *See* Fraser, *Summary Judgment Where Facts Are Not Controverted,* 51 O.B.J. 1611, 1612 (1980); *Loper v. Austin,* 1979 OK 84, 596 P.2d 544.

As noted above, summary judgment procedure need not seek or result in a "judgment" at all. Dist. Ct. Rule 13 was amended in 2002 to expressly provide for a motion for "summary disposition of any issue on the merits" based on the ground that evidentiary materials are undisputed. Even before the amendment, the rule provided that the court could determine that there is "no substantial controversy as to certain facts or issues," and proceed to trial on the facts or issues which remain in dispute. Dist. Ct. Rule 13(e). An order granting such a motion is "interlocutory and is not reviewable on appeal prior to final judgment." Dist. Ct. Rule 13(e). *See also Reams v. Tulsa Cable Television, Inc.,* 1979 OK 171, 604 P.2d 373 (pre-2002 amendment, discussing procedure for determination of fewer than all issues as one for an "interlocutory summary adjudication"). An order granting such a motion was commonly referred to as one for "partial summary judgment," but as stated in *Reams* that was a misleading description, since such a decision is not

a "judgment" but an interlocutory order disposing of fewer than all issues. *Reams, supra,* 1979 OK 171, prgf 5, 604 p.2d at 375-376. The amended rule carefully draws the distinction between a "summary judgment" and a "summary disposition of any issue on the merits." For purposes of convenience in discussion here, "summary judgment" will refer to either or both procedures (*i.e.* adjudication of all, or fewer than all issues), depending on the context.

A motion for summary judgment is *not* deemed a consent to the trial court's exercise of personal jurisdiction, or a waiver of the right to file a motion to dismiss the action. Dist. Ct. Rule 13(d).

An article discussing Oklahoma summary judgment procedure, co-authored by an Oklahoma Court of Appeals judge, is Langdon and Reif, *Summary Judgment: What it Is and Is Not,* 73 O.B.J. 475 (2002).

Importance of Considering Appellate Procedure When Filing Motion

A Motion for summary judgment is governed by strict procedures relating to appellate review, prescribed by Sup. Ct. R. 1.36, and referred to in Dist. Ct. Rule 13(h). These appellate procedures must be considered *before* filing a motion for summary judgment, because in the event of an appeal, the parties are limited to presenting to the appellate court *only* those materials (usually

including *briefs*) which were presented to the trial court. On a motion for summary judgment, therefore, the parties are making their presentation to *both* courts in the event of an appeal.

Specifically, Dist. Ct. Rule 13(h) provides that the record on appeal from a summary judgment is limited to:

Pg 10-46

1. the written judgment, including a Section 994, if applicable; [1]

2. the pleadings enumerated by 12 O.S. Section 2007(A);

3. the motion for summary judgment and response, with supporting briefs and materials filed pursuant to Dist. Ct. Rule 13(a) or (b);

4. any other filing which the trial court's orders (by journal entry or otherwise) recite was considered in its decision;

5. any other order dismissin g the claim or determining the issues as to some but not all parties or claims;

6. any transcripts of the hearing on the motion; and

7. any motions and supporting or responsive briefs for a new trial (re-examination) of the summary judgment or appealable summary disposition process.

---

[1] The rule refers to Section 1006, which was recodified as Section 994.

See Dist. Ct. Rule 13(h)(1)-(7), summarized above. The rule also states that summary judgments (and appealable summary dispositions) are subject to accelerated appellate review under Sup. Ct. R. 1.36. Sup. Ct. R. 1.36 provides that on appeal, the court will consider only the items included in the record, listed above, with no further briefing unless otherwise ordered (which the rule makes clear will be an unusual case).

The appellate procedure on appeals from summary judgments is discussed in Section 1312, infra.

As discussed below, parties on summary judgment have long been generally limited to the same record on appeal which was presented to the district court. However, the limitation of the parties to the same *legal arguments,* and indeed the same briefs presented to the district court, is new to Oklahoma. The purpose of the rule is to prevent the parties from seeking to uphold or overturn a

---

1.1 An interlocutory summary disposition of fewer than all issues would not ordinarily be appealable, but could be, for example, if it fell into the category of orders appealable by right under O.S. Section 993, or if it were certified under 12 O.S. Section 952(b)(3), or if the necessary determinations were made to convert it to a final judgment under 12 O.S. Section 994(A).

summary judgment on arguments which the trial court never had an opportunity to consider. Thus, for appeals from summary judgments, at least, the rule that a party may defend a judgment on any ground supported by the record does not generally apply. Only the arguments made to the trial court will be presented to the appellate court.

Even before the adoption of the accelereated procedures for appeals from summary judgments, a party opposing summary was limited on appeal to the issues, arguments and authorities presented in the trial court.[2] Moreover, Dist. Ct. Rule 13(b) provided then and provides now that the party opposing the motion cannot on appeal rely on any fact or material that is not referred to or included in the statement responding to the motion in order to show that a substantial controversy exists.[3] The difference now is that *all* parties are limited to the record made to the trial court, *including* the briefs in the trial court.

See also discussion of "Appellate Standard of Review," and "Appeals from Interlocutory Orders

---

[2] *See Northrip v. Montgomery Ward & Co.*, 1974 OK 142, pgrfs 1-2, 529 P.2d 489, syllabus no. 1; *Frey v. Independent Fire & Cas. Co.*, 1985 OK 25, Pgrf 6, 698 P.2d 17.

[3] *See American Nat'l Bank v. Clark & Van Wagner*, 1984 OK Civ App 37, pgrf 15, 692 P.2d 61,64

Granting or Denying Summary Judgment," *infra.*

page 10-47

The impact of the trend toward more favorable treatment of motions for summary judgment has arguably also been felt in the Oklahoma state court system, even if the Oklahoma Supreme Court does not subscribe to all the tenets of the U.S. Supreme Court's trilogy.[16] Nevertheless, in the past, summary judgments have not fared well on appeal, with more than half reversed. The accelerated appellate procedure described above is designed to improve the likelihood of affirmance, by requiring parties opposing summary judgments to make all their arguments clearly known to the trial court.

page 10-55

---

[16] There are plenty of examples where the Oklahoma appellate courts have sustained summary judgments. *E.g., Shanbour v. Hollingsworth,* 1996 OK 67, 918 P.2d 73 (Governmental Tort Claims Action, limitations issue); *Sparks v. Hicks,* 1996 OK 20, pgrf 14, 912 P.2d 331, 334 (physician abondonment of patient); *Grantham v. Tulsa Club, Inc.,* 1996 OK CIV APP 38, 918 P.2d 410 (dram shop laws case); *Kastning v. Melvin Simon & Associates, Inc.,* 1994 OK 68, 876P.2d 239 (slip and fall case); *Hutchins v. Slilcone Specialities, Inc.,* 1993 OK 70, 881 P.2d 64; *Hamilton v. Allen,* 1993 OK 46, 852 P.2d 697; *Goodwin v.*

Old Republic Ins. Co., 1992 OK 34, 828 P.2d 431 (upholding summary judgment, holding that the facts would not support an action for bad faith refusal to pay an employee's workers' compensation award); *Hill v. Agri-Risk Services,* 1992 OK CIV APP 16, 827 P.2d 904 (upholding summary judgment against claim for breach of contract to provide insurance, bad faith breach of insurance contract and misrepresentation as to coverage thereof); *Hadnot v Shaw,* 1992 OK 21, 826 P.2d 978; *Smith v. Farmers Cooperative Ass'n,* 1992 OK 11, pgrf 20, 825 P.2d 1323, 1328 (upholding summary judgment against claim for intentional infliction of emotional distress, while reversing on question of retalitory discharge); *Wofford v. Eastern State Hosp.*, 1990 OK 77, 795 P.2d 516; *Shaw v. Loeffler,* 1990 OK 81, 796 P.2d 633; Roach v. Atlas Life Ins. Co., 1989 OK 27, pgrf 16, 769 P.2d 158, 163; Commodore Home Sys., Inc. v. Citicorp Acceptance Co., 1989 OK 46, pgrf 22, 780 P.2d 674, 678.

APPENDIX GG

OKLAHOMA COURT RULES AND PROCEDURE

STATE

2007

Chapter 3

2007 Thomson/west

Title 12 Oklahoma Statutes § 100

Limitation of new action after reversal or failure otherwise than on merits

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within one (1) year after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed.

R.L.1910, § 4662; Laws 1975, c. 44, § 1, emerg. eff. March 31, 1975

APPENDIX HH

Exerpt 1. From the Court of Civil Appeals Opinion in case # 99704 :

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA DIVISION III

ROBERT OLSON, Plaintiff/ Appellant, vs CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., And DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants/ Appellees	)	Filed Court of Civil Appeals State of Oklahoma Feb 17 2004 Michael S. Richie Clerk # 99704

APPEAL FROM THE DISTRICT COURT OF
BLAINE COUNTY, OKLAHOMA

HONORABLE RONALD G. FRANKLIN,
TRIAL JUDGE

AFFIRMED

Exerpt from page 5, paragraph 8 :

8. Olson objected to the motions for summary judgment, but submitted no evidentiary materials whatsoever. The trial court granted summary judgment to Continental and Davis on Olson's claims, concluding :

> "[T]he old leases have quite probabl[y] expired under the terms of said leases for failure to produce. In addition thereto; it is undisputed or admitted that after the new leases were acquired and [Davis] had acquired a[n] interest in the old leases that a quiet title action was filed in Blaine County, that the Plaintiff was named a party defendant and that the plaintiff asked for no affirmative relief and as a result thereof, a settlement was reached in said case which resulted in the plaintiff being dismissed in that lawsuit and the old leases voluntarily released, thereby extinguishing any interest the plaintiff owned in the leases."

Exerpt 2 from :

CLERK'S CERTIFIED RECORD ON ACCELERATED APPEAL #99704 BOOK 1 of 4

From Table of Contents :

1. Petition to Quiet Title and to Recover Real Property and Money
2. Plaintiff's Motion to Deny Defendants' Combined Motion to Dismiss and Motion for Sanctions

Plaintiff's Motion to Deny Defendants, Combined Motion to Dismiss and Motion for Sanctions filed by Defendants Davis Operating Company and William H. Davis

3. Plaintiff's Motion for Sanctions
4. Judge's Order denying Defendants' Motions for Dismissal
5. Plaintiff's answer to Counterclaim of Davis Operating Company
6. Plaintiff's Response to Defendants', Davis Operating Company and William H. Davis, Motion for Summary Judgment and Plaintiff's Motion to Deny Defendants' Motions for Summary Judgment

B. Response Exhibits

BOOK 2 of 4:

7. Plaintiff's Response to Defendants', Continental Resources, Harold Hamm and Tom Luttrell, Motion for Summary Judgment and Brief in Support Thereof, and Plaintiff's Motion to Deny Defendants' Motion for Summary Judgment

C. Response Exhibits

8. Plaintiff's Reply to Defendants' Continental Resources, Inc., Harold Hamm and Ton Luttrell's Reply Brief in Support of Summary Judgment
9. Plaintiff's Submission of Finding of Facts and Legal Conclusions for the Judgment Order Concerning Summary Judgment

Exerpt 3 from:

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff/ Appellant, vs CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., And DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants/ Appellees	Filed Approximately March 17, 2004 Case No. # 99704

APPELLEES, CONTINENTAL RESOURCES, INC., HAROLD HAMM, AND TOM LUTTRELL'S ANSWER TO APPELLANT'S PETITION FOR WRIT OF CERTIORARI

Exerpt from page 4, paragraph 2 :

"The COCA properly followed the law applicable to summary judgments. In the first paragraph of the decision, the COCA states, 'We affirm because Olson submitted no evidentiary materials *establishing a material issue of fact.*' (Opinion, at Paragraph 1, emphasis added) Again in paragraph 10 of it's opinion, the COCA states, 'Olson's statement controverted their assertions, but was not accompanied by *supporting evidentiary materials.*' (Opinion, at Paragraph 10, emphasis added). These statements by the COCA are absolutely correct. Olson did submit some evidentiary materials in his responses to the Appellee's motions. Therefore, the COCA's statement that Olson submitted no evidentiary materials whatsoever is an overstatement. However, the few evidentiary materials that Olson attached to his responses did not establish a genuine dispute regarding any material facts."

Exerpt 4, from :

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff/ Appellant, vs CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., And DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants/ Appellees	)	Filed Approximately March 17, 2004 Case No. # 99704

ANSWER OF DAVIS OPERATING COMPANY AND WILLIAM H. DAVIS TO PETITIONER/ APPELLANT'S PETITION FOR CERTIORARI

Exerpt 5, from pages 5 and 6

"Petitioner argues that this Court should review the decision of the COCA for three (3)

reasons as summarized below :

1. The COCA mistakenly determined that petitioner submitted no evidentiary materials establishing a material issue of fact in the district court,

2. The mistake in # 1 biased all subsequent legal analysis of the COCA; and

3. The COCA did not test all evidentiary tendered in summary process at the district court for its legal sufficiency.

While Petitioner attached exhibits to his objection to Defendants'/Appellees' Motion for Summary Judgment, the exhibits do not constitute acceptable evidentiary material in support of his objection. (Record at Book 1, tab 6 and Book 2, tab 7). The exhibits include pleadings from Case No. CJ-99-123, between Continental Resources, Inc., and Davis Operating Company, as well as copies of the lease releases from all the working interest owners."